

State Bar of California:

**Opportunities Exist To Reduce
Fees, Better Control Administration
and Planning, and Strengthen an
Improved Discipline Process**

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CALIFORNIA STATE AUDITOR

May 21, 1996

96021

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As required by Chapter 782, Statutes of 1995, the Bureau of State Audits presents its audit report concerning the State Bar of California's (State Bar) use of membership fees, its discipline process, and its administration and planning practices. This report concludes that the State Bar has not taken advantage of opportunities to reduce fees. For example, if the State Bar improved its recovery of costs from disciplined attorneys, it could significantly reduce the annual membership fee. Further, the State Bar could reduce costs by strengthening its controls over travel expenses and contracting. For example, we found instances where the State Bar could have saved money if it had hired additional staff rather than contracting for services. In addition, although it has improved the discipline process, the State Bar should make additional changes to enhance its effectiveness. Moreover, certain discipline practices may create the appearance of bias in favor of attorneys. Finally, the State Bar has not developed a complete strategic plan that management can use as a guide to accomplishing the overall mission.

Respectfully submitted,

KURT R. SJOBERG
State Auditor

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Summary

Audit Highlights ...

The State Bar:

- ☑ *Has not taken advantage of opportunities to reduce its membership fees.*
 - ☑ *Recently made significant changes to its discipline process, but certain practices may create the appearance of bias in favor of attorneys.*
 - ☑ *Does not adequately control travel and contracting costs.*
 - ☑ *Has not developed a complete strategic plan or set benchmarks to measure its performance.*
-

Results in Brief

The State Bar of California (State Bar) is a public corporation established by the California State Constitution. The Business and Professions Code provides the State Bar with guidance and direction in fulfilling its mission to preserve and improve the justice system in order to assure a free and just society under law. In addition, a 23-member board of governors (board) establishes policy and provides guidance to the State Bar in performing its various functions, such as licensing and disciplining attorneys, and providing programs to promote the professional growth of its members.

Our review focused on the State Bar's use of the annual membership fee, its disciplinary system, administrative processes, and strategic planning efforts. During our review, we found:

- Attorneys admitted to practice law in the State are required to pay annual membership fees to the State Bar. The average membership fee of \$461 supports a variety of programs that are either required by law or implemented at the discretion of the State Bar. The State Bar has not taken advantage of opportunities to reduce the fees its members pay. Specifically, because its cost-recovery efforts are poor, it must use a greater share of the membership fees to support its Discipline and Client Security programs. In addition, the State Bar's policy of using a portion of the membership fee to support voluntary programs prevents the State Bar from using more of the fee to support programs that benefit all members.
- The State Bar has made significant changes to its discipline process that, overall, have increased its efficiency, effectiveness, and reliability. However, it has not implemented certain recommendations made by the Discipline Evaluation Committee that would further enhance the effectiveness of the system. Also, certain practices may create the appearance of bias in favor of attorneys. For example, it has given discretion to deputy trial counsels to close cases without incorporating a systematic process of review by State Bar management. In addition, the State Bar

eliminated its process of allowing complainants to appeal complaints they believe were closed improperly. Both of these actions may contribute to any public perception that the State Bar does not properly regulate attorney conduct.

- The State Bar does not adequately control its travel and contracting costs. For example, 13 of the 32 travel claims we reviewed contained exceptions to the travel policy. As a result, the State Bar does not have assurance that it spends funds for board-approved purposes and obtains the best price for goods and services. In addition, some methods the State Bar uses to allocate general and administrative costs are weak. As a result, restricted funds may not pay their fair share of such costs, and program managers cannot assess the reasonableness of the general and administrative costs that benefit their programs.
- The State Bar's strategic planning efforts need improvement. Specifically, it has not developed a complete strategic action plan that staff can use as a guide to accomplishing the overall mission. In addition, the State Bar has not established time lines or action plans to complete all its objectives, nor has it developed benchmarks or performance measures to gauge the efficiency and effectiveness of its programs. As a result, management and staff cannot adequately assess whether they are successfully accomplishing the goals of their offices and, ultimately, the overall mission of the State Bar.

Recommendations

To take advantage of opportunities to reduce the annual membership fee, the State Bar should improve the recovery of costs related to its Discipline and Client Security programs, and charge all the costs for voluntary programs to those who participate in such programs rather than passing the costs on to all members.

To maximize the efficiency and effectiveness of its discipline process, the State Bar should establish procedures to respond to public concerns regarding improper closure of cases against attorneys and to systematically review discipline cases closed without discipline or with alternative discipline. The State Bar should also adopt a policy to close an inquiry or forward it to the enforcement unit within 60 days. Finally, the State Bar should review and justify the need for its current number of judges in the Hearing Department of the State Bar Court.

To provide better control over its costs and limit opportunities for abuse, the State Bar should improve its controls over travel expenses and contracts, as well as its methods of allocating general and administrative costs.

To improve the effectiveness of its strategic planning efforts, the State Bar should establish time lines and action plans for its objectives, define benchmarks or targets for its significant activities, measure the results of its operations against benchmarks and targets, and perform employee evaluations based on clearly communicated expectations.

To aid in its development of benchmarks and performance measures, and to ensure amounts reflected as legislative activities in the Hudson deduction are complete and based on actual efforts, the State Bar should implement a time-reporting system to track the amount of time its employees devote to specific activities.

Agency Comments

While the State Bar agrees with most of our recommendations, it generally disagrees with those related to its discipline process. For example, the State Bar does not agree that it should provide an independent appeal process to respond to concerns of complainants who feel that their complaints against attorneys were closed improperly. However, the State Bar does intend to address promptly all our recommendations, especially those related to tightening administrative controls.

Introduction

The California State Constitution established the State Bar of California (State Bar) as a public corporation and requires every person admitted and licensed to practice law in California to be a member of the State Bar except when holding office as judge of a court of record. Chapter 4 of the Business and Professions Code, commonly referred to as the State Bar Act, provides guidance and direction to the State Bar in fulfilling its mission and carrying out its responsibilities. According to its strategic action plan, the State Bar's mission is to preserve and improve the justice system and assure a free and just society under the law.

The State Bar is guided by a board of governors (board) that consists of a president and 22 members: 16 attorneys and 6 public individuals who have never been members of the State Bar or admitted to practice before any court in the United States. The board has established several committees that provide policy and guidance regarding various functions.

The State Bar performs the following functions: admissions, discipline, continued competency, legal services to both the public and to lawyers, and the administration of justice. To support the cost of performing these functions, the State Bar collects an annual membership fee from each of its members. Members can voluntarily pay an additional amount to participate in various activities that relate to a specific segment of the legal profession, such as the Family Law Section. In 1995, the State Bar recorded almost \$56 million in membership fees, an amount representing more than 65 percent of the \$86 million in total revenue that it earned for the year. During 1995, the State Bar spent approximately \$77 million, including \$37 million (48 percent) to operate its discipline process and \$7 million (9 percent) on its admissions program. The remaining \$33 million supported its other activities.

Scope and Methodology

Chapter 782, Statutes of 1995, required the State Bar to contract with the Bureau of State Audits to conduct a comprehensive management audit. The legislation states that the audit shall include a review of the following topics:

- The cost and efficiency of the discipline process;
- The consolidation of State Bar offices in San Francisco and Los Angeles;
- The appropriate level of funds to be maintained in the Building Fund;
- The methods of setting executive and other staff salaries and the amount of managerial and supervisorial staffing;
- The costs of travel, meals, retreats, and other expenditures;
- The amount of membership fees required for the State Bar to fulfill its mandated functions; and
- The amount of membership fees used by the State Bar for its legislative activities.

In addition to meeting the requirements listed in the statute, we reviewed the State Bar's efforts to develop a strategic action plan for accomplishing its overall mission. To determine if it had established mission statements, identified goals and objectives, and developed workload standards for its various offices, we interviewed State Bar senior executives and other key staff. In addition, we reviewed the State Bar's strategic action plan to determine whether the plan outlined goals and objectives, action plans, and time lines that management could use as guides in accomplishing the overall mission.

To determine whether the State Bar had used funds in compliance with all applicable laws and regulations, we reviewed its financial statements for 1994 and its Statement of Chargeable and Nonchargeable Expenses prepared by Deloitte and Touche, LLP. We selected a sample of transactions tested by Deloitte and Touche during its audit and reviewed the related documents. Additionally, we reconciled revenues and expenses as reported in the State Bar's internal operating statements to amounts reported in the Deloitte and Touche reports and performed an analytical review of revenues and expenses.

To assess the cost and efficiency of the discipline process, we reviewed the controls the State Bar uses to ensure that complaints of attorney misconduct are processed properly. We also compiled and reviewed key statistics from the discipline process for the years 1991 through 1995. We also reviewed the recommendations made by the Discipline Monitor and the

Discipline Evaluation Committee and determined the actions the State Bar has taken to respond to the recommendations. We provide a brief description of the current discipline process in Appendix A.

*The State Bar's rationale
for maintaining offices
in San Francisco and
Los Angeles is reasonable.*

We reviewed the programs the State Bar operates to determine whether it could consolidate its offices in either San Francisco or Los Angeles. We considered the number of offices maintained by similar organizations regulating other professions in the State, and we reviewed the State Bar's rationale for maintaining offices in San Francisco and Los Angeles. According to the State Bar, the primary reason is to operate its discipline program effectively. By maintaining offices in these two cities, the State Bar believes that complainants and attorneys being disciplined have better access to the discipline process. Furthermore, it cited the California Government Code that requires many state regulatory agencies conducting proceedings under the Administrative Procedures Act to hold hearings in San Francisco, Los Angeles, and Sacramento. Based on our review, we agree with the State Bar's rationale and believe that it is appropriate to maintain offices in San Francisco and Los Angeles.

To determine an appropriate level of funds to be maintained in the Building Fund, we interviewed State Bar staff to determine how it intends to use the fund and whether the current fund balance and expected revenues will be sufficient to support the intended uses.

To assess the methods used for setting executive and other staff salaries, we reviewed salary schedules and the memoranda of understanding negotiated between the State Bar and the union representing its employees. We also reviewed executive and nonexecutive staff salary studies and compared the salaries of the State Bar's senior executives with the salaries of the highest-paid executives at the California Attorney General's Office and the California Medical Board. We provide information on current staffing levels and salaries in Appendix B.

To evaluate the reasonableness of the level and classification of managerial and supervisory staffing, we reviewed position control rosters and developed ratios of staff to executives within the organization. In addition, we performed an analytical review of staffing levels and ratios for the last three years to identify trends or significant changes.

To determine the costs of travel, meals, retreats, and other related expenses, we selected a sample of transactions and determined whether the expenses were appropriate and the payments made were in accordance with applicable State Bar travel policies.

To determine the amount of membership fees the State Bar used to fulfill its mandated functions, we reviewed applicable laws, the Statement of Chargeable and Nonchargeable Expenses, and various other sources. After identifying the State Bar's functions, we divided them into two categories: mandatory and discretionary. We then calculated the portion of the annual membership fees used to support its mandatory functions. Finally, we determined the amount of member fees the State Bar used for its legislative activities related to discretionary programs.

Chapter 1

The State Bar Could Reduce Its Compulsory Membership Fee

Chapter Summary

The California Business and Professions Code requires attorneys who have been admitted to practice law in the State to pay annual membership fees (compulsory fees) to support the State Bar of California's (State Bar) activities. During 1995, active members paid an average of \$461. Of this amount, \$277 went to direct program expenses and \$129 to general and administrative costs. The remaining \$55 is an operating surplus available for future spending.

The compulsory fees support a variety of programs that are either required by law or implemented at the discretion of the State Bar's board of governors (board). We found that the State Bar has not taken advantage of opportunities to reduce compulsory membership fees. Specifically, because its cost-recovery efforts are poor, it must use a greater share of the compulsory fees to support its Discipline and Client Security programs. In addition, the policy of using a portion of the compulsory fees to support voluntary programs prevents the State Bar from using more of the fees to support programs that benefit all members.

After classifying the costs of activities supported with compulsory fees as either mandatory or discretionary, we determined that in 1995 the State Bar spent approximately \$14 of the average membership fee for direct program expenses and general and administrative costs to support legislative activities related to its discretionary programs. In addition, the State Bar's method for calculating these legislative costs includes estimates that it cannot adequately support.

To consolidate all its Bay Area offices, the State Bar recently purchased a building in San Francisco. It plans to use its existing Building Fund balance and \$10 of each compulsory fee to pay for the building over the next ten years. We found that Building Fund revenues will be more than sufficient to pay for the building and excess funds could support other allowable uses, such as lease costs currently paid by the State Bar's

General Fund. However, the law precludes the State Bar from reducing the fee earmarked for the Building Fund until it pays the debt on the San Francisco property in full.

***The Compulsory Membership Fee
Supports Both Mandatory and
Discretionary Activities***

The State Bar annually prepares a Statement of Chargeable and Nonchargeable Expenses (statement) that identifies for the members the major categories of expenses their compulsory membership fees support. The statement also categorizes expenses as chargeable or nonchargeable. According to the United States Supreme Court in *Keller vs. State Bar of California*, State Bar expenses are chargeable to members if they are reasonably incurred for the purpose of regulating the legal profession or improving the quality of legal service available to the people of the State. The issue in the *Keller* case concerned whether state bars could use compulsory membership fees for various activities of a political or ideological nature. The court considers expenses for political or ideological activities chargeable if they are reasonably related to the State Bar's regulatory functions and improvement of legal service; otherwise such expenses are nonchargeable. To address this issue, the annual statement includes a calculation of the amount objecting members can deduct from their membership fee if they choose not to support the State Bar's non-germane political or ideological activities. Because it focuses on legislative activities, the statement does not provide a clear distinction between mandatory activities the State Bar is required to perform and the discretionary activities it chooses to perform. While all mandatory activities are chargeable, discretionary activities include both chargeable and nonchargeable costs.

◆
*Members are not given a
clear distinction between
mandatory activities of
the State Bar versus those
it chooses to perform.*

The State Bar accounts for the revenue derived from the compulsory membership fees in three funds: the General Fund, the Client Security Fund, and the Building Fund. For each attorney, the fee varies according to years in practice and whether the attorney is an active or inactive member. The following table shows the authorized membership fees charged to four categories of members and the broad purpose of these fees pursuant to the California Business and Professions Code.

Table 1**Amount of Annual Membership Fee**

Description	Active Members			Inactive Members
	Number of Years Licensed To Practice Law in California			Less Than 70 Years of Age
	3 Years or More	Less Than 3 Years	Less Than 1 Year	
Base rate*	\$291	\$223	\$192	\$40
Additional fees:				
Building Fund	10	10	10	10
Discipline augmentation	112	112	112	
Client Security Fund	40	40	40	
Discipline process	25	25	25	
Total	\$478	\$410	\$379	\$50

*The State Bar anticipates it will undertake the budgetary steps necessary to allow for a 1997 fee reduction of \$20.

The average fee paid by active members was \$461 in 1995.

During 1995, the State Bar recorded membership revenues of approximately \$49.6 million in the General Fund, \$4.8 million in the Client Security Fund, and \$1.4 million in the Building Fund. Fees from inactive members generated revenues of approximately \$974,000 in the General Fund and \$243,000 in the Building Fund. Inactive members under age 70 pay a flat fee of \$50 per year, while those over age 70 pay no fee. After deducting the revenues generated by fees from inactive members, we calculated an average fee paid per active member by dividing the remaining revenues by the number of active members at October 31, 1995. The resulting average fee of \$461 differs from the \$478 compulsory fee because active members practicing less than three years pay a reduced fee. Figure 1 shows the amount of the average fee that supported each of the three funds and the remainder of this section indicates how the State Bar used the average fee per active member in 1995.

During 1995, membership fees funded direct program expenses and general and administrative costs for each of the three funds. Because the State Bar did not spend all the fees it received, a portion of the 1995 membership fees represents a surplus that has increased fund moneys available in 1996 and subsequent years. Table 2 illustrates the amount of the average fee from active members that the State Bar used for program costs and general and administrative costs, as well as the operating surplus for each of the three funds.

Figure 1

***Summary of Average Fees
per Active Member in 1995***

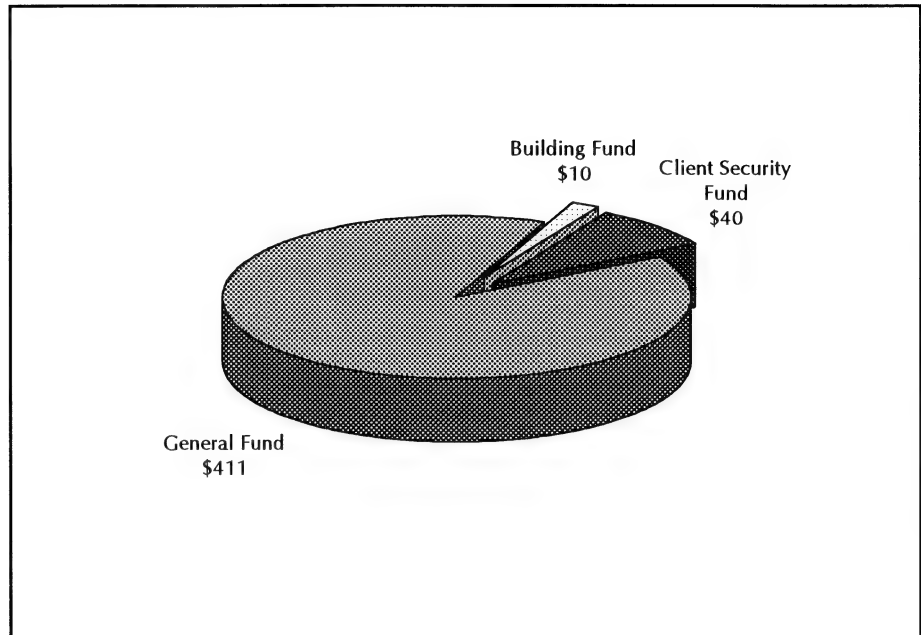


Table 2

***Breakdown of the 1995 Average
Fee per Active Member***

	Expenses			Total
	Direct Program	General and Administrative	Operating Surplus	
General Fund	\$249	\$123	\$39	\$411
Client Security Fund	28	6	6	40
Building Fund			10	10
Totals	\$277	\$129	\$55	\$461

The State Bar established the Client Security Fund to relieve or mitigate losses caused by active members' dishonest conduct arising from or connected with the practice of law. The Business and Professions Code, Section 6140.55, restricts the use of these moneys to the fund's purposes and administrative costs, which include the costs of processing, determining, defending, or insuring claims against the fund.

◆

The State Bar planned to use Building Fund revenues collected in 1995 as a down payment on a new location in San Francisco.

◆

Like the Client Security Fund, the Building Fund has restricted uses. Specifically, the Business and Professions Code, Section 6140.3, stipulates that the State Bar may use the revenue generated for this fund only to pay the costs of financing, constructing, purchasing, or leasing facilities to house State Bar staff or to finance any major capital improvement projects related to facilities that it owns. The State Bar did not spend the Building Fund revenues collected in 1995 because it planned to use them as a down payment on the purchase of a new location in San Francisco. The State Bar has purchased the property and expects to occupy it by February 1997.

The State Bar deposits the portion of the membership fees not designated for a particular purpose by law into the General Fund which is unrestricted. As shown in Table 2, the State Bar used an average of \$277 of the 1995 membership fee from active members to support direct program expenses of \$28 in the Client Security Fund and \$249 in the General Fund. Table 3 provides a further breakdown of the \$249 into the specific General Fund programs the fee supported and categorizes the expenditures as mandatory or discretionary. For example, the State Bar used \$196 of each active member's fee to support its discipline process, with \$193 going to mandatory activities and \$3 to discretionary activities.

Table 3

***Breakdown of Active Membership Fees
Into Mandatory and Discretionary
Activities of General Fund Programs***

Program	Mandatory	Discretionary	Total Expenditures
Discipline and Adjudication	\$193	\$ 3	\$196
Legal Education and Competence	10	8	18
Communications	5		5
Administration of Justice	2	12	14
Bar Relations		7	7
Legal Services Delivery	1	8	9
Total Program Expenses	\$211	\$38	\$249

Improved Collection Efforts Could Reduce Annual Membership Fees

The State Bar recovers only a small portion of reimbursable costs that attorneys owe because of their dishonest or unethical conduct. The Business and Professions Code, Sections 6140.5 and 6086.10, require the State Bar to charge offending attorneys for certain costs related to its Client Security and Discipline programs. Specifically, attorneys whose actions have caused the Client Security Fund to pay a claimant must reimburse the fund for all these moneys. Further, any action by the State Bar to publicly reprove or discipline a member requires the member to pay certain costs. Despite the laws requiring repayment, the State Bar recovers only a small portion of such costs. As shown in Table 4, the State Bar has collected an average of 4 percent and 35 percent, respectively, of the amounts it billed for costs incurred for its Client Security and Discipline programs during the past four years.

Table 4

Costs Billed and Recovered for Client Security and Discipline Programs

Year	Client Security			Discipline		
	Costs Billed	Costs Recovered	Percent Recovered	Costs Billed	Costs Recovered	Percent Recovered
1992	\$ 3,034,713	\$ 92,056	3%	\$ 958,495	\$ 340,458	36%
1993	3,224,757	144,706	4	1,218,603	436,568	36
1994	2,427,549	92,767	4	1,203,735	348,634	29
1995	3,126,107	123,042	4	1,047,831	408,387	39
Totals	\$11,813,126	\$ 452,571	4%	\$4,428,664	\$1,534,047	35%


Because the Client Security and Discipline programs depend on the State Bar's annual membership fee, these low rates of recovery have a direct, significant impact on the size of the fee. For example, if the State Bar had collected the remainder of the costs it billed in 1995 for these programs, it could have reduced the average membership fee for active members by approximately \$31.

According to its Office of General Counsel (general counsel), the only way the State Bar can seek recovery from an attorney without a formal court judgment is by adding the costs to the attorney's annual fee bill. However, according to State Bar


officials, using the annual fee bill for cost recovery has had limited success because many of the attorneys billed are insolvent or unlikely to practice law in the future. The general counsel's staff also indicated that, although their office pursues judgments against some attorneys to recover Client Security Fund payments when the dollars involved are significant, it does not do so in most cases because of cost-benefit considerations. This also contributes to low recovery rates.

The State Bar could recover additional costs related to its discipline activities if it imposed more public than private reprovals. A reproof is a method of disciplining an attorney by imposing censure or reprimand and can be issued by the California Supreme Court or the State Bar Court. The character of the reproof is significant because the State Bar can only seek recovery of costs related to public reprovals. Although the Office of the Chief Trial Counsel (chief trial counsel) encourages public reprovals, the number of private reprovals rendered by the State Bar Court nevertheless far exceeded the number of public reprovals every year from 1991 through 1995.

Finally, the State Bar may not be including in the amounts it bills disciplined attorneys all the costs it is entitled to recover. According to a 1993 report by the State Bar's Office of Operational Audits, the cost model it uses to calculate discipline costs had not been updated since 1988 and does not capture all the costs it is entitled to recover from disciplined attorneys. The assistant director of administration for the chief trial counsel stated that the cost model has not yet been updated, although staff are currently working on a new model.



The State Bar could recover additional discipline-related costs if it imposed more public reprovals and billed for all costs to which it is entitled.




Because the State Bar is not pursuing recovery of all the costs to which it is entitled and because its recovery efforts are poor, it uses a greater than necessary portion of the compulsory membership fee to support its Client Security and Discipline programs. As a result, members must pay a larger than necessary fee to support these programs.


***Active Members Pay Approximately
\$14 per Year To Support Legislative
Activities for Discretionary Programs***

As mentioned earlier in this chapter, the State Bar determines annually the nonchargeable portion of its costs related to political or ideological activities. It uses the results of this analysis to determine the amount that members may deduct from their annual compulsory fee. Commonly referred to as "the Hudson deduction," this nonchargeable amount supports

legislative activities that are deemed political or ideological in nature and are not germane to the State Bar's primary mission. The Hudson deduction is calculated using the most recent audited financial statements. Accordingly, the Hudson deduction for the 1996 annual fee bill, which was sent to members in November 1995, was based on 1994 audited expenditures.





Under the State Bar's calculations, members could deduct only \$1 from their compulsory fee for 1996 if they chose not to support "non-germane" legislative activities.



To calculate the Hudson deduction, the State Bar first identifies the costs of legislative activities related to its discretionary programs. It does not separately identify the costs of legislative activities related to its mandatory programs since all activities related to mandatory programs are considered chargeable. It then categorizes these costs as germane and non-germane based on an analysis of the number of bills or resolutions reviewed, monitored, and lobbied by various groups within the State Bar. For example, the Conference of Delegates is a group of voluntary local and specialty bar associations that meets every year to consider resolutions on issues affecting lawyers and the administration of justice. The State Bar coordinates the work of this group. In 1994, the conference filed 170 resolutions for consideration. Of these, the State Bar determined that 20 were non-germane or potentially non-germane. Using these numbers, it prorated the germane and non-germane legislative costs of the conference. A similar analysis provided the proration of costs for the Office of Governmental Affairs. In this case, only 12 of the 234 bills sponsored or commented on by the office were considered non-germane. Based on such calculations, the State Bar determined that members could deduct \$1 from their 1996 compulsory fee if they chose not to support the non-germane legislative activities.

We reviewed the State Bar's costs for legislative activities related to its discretionary programs and determined that it used approximately \$14 of the average membership fee to support both germane and non-germane discretionary activities in 1994. The State Bar deemed that \$13 of the \$14 supported activities germane to its mission. We could not determine the costs of legislative activities related to mandatory programs since the State Bar does not have a time-reporting system which allows employees to track time they spend on legislative activities. In addition, it does not separately identify such costs in performing the Hudson deduction. We did not perform an analysis of specific bills and resolutions categorized as either germane or non-germane. Instead, we evaluated the State Bar's method for identifying the legislative costs for its discretionary programs.


*The methodology used
to determine certain
legislative costs is not
sound.*


Although it includes the majority of legislative costs for its discretionary programs in calculating the Hudson deduction, we question the soundness of the methodology used to determine certain costs. For example, in its 1994 calculation, the State Bar determined that the legislative function of the Conference of Delegates represented approximately 67 percent of the conference's total activities. This percentage was based largely on an estimate of the time staff spent supporting conference programs in 1989. Because it does not have a time-reporting system to track the amount of time staff spends on specific projects, the State Bar could not provide evidence for us to determine whether the estimate was reasonable. Further, we question the validity of a 1994 calculation that is based on an estimate developed in 1989. In a similar instance, the State Bar estimates that the executive and standing committees of the Legal Services Section spend approximately 6 percent and 6.2 percent, respectively, of their time reviewing, monitoring, and lobbying legislation related to the practice of law and the administration of justice. As with the Conference of Delegates' calculation, we could not determine whether these estimates were reasonable because the State Bar could not provide adequate evidence to support them. Based on both estimates, the State Bar determined that \$143,150 of costs for the Conference of Delegates and the two committees of the Legal Services Section did not represent legislative activities.


Finally, according to State Bar officials, some staff devote a limited amount of time to legislative activities, but costs related to their efforts are not included as legislative activities in the calculation of the Hudson deduction. The State Bar further stated that the costs related to the efforts of these employees are generally determined to be chargeable. However, since it does not have a time-reporting system which allows employees to track time they spend on specific projects, we could not determine whether the amount of time employees spend on legislative activities is significant.

The State Bar Uses Compulsory Fees To Support Voluntary Programs


The State Bar uses money from its General Fund to pay for administrative support of various special-interest membership groups called "sections." The purpose of a section is to further knowledge and education in a particular area of legal practice. For example, the Litigation Section was formed in 1983 to further the knowledge of State Bar members about all aspects of litigation, to develop educational programs related to litigation, and to assist in the formulation and

implementation of legislation to assist members. Most financial support for the individual sections comes from voluntary fees contributed by members who choose to participate in section activities. However, as a matter of board policy, the State Bar uses money from its General Fund to pay the salaries and related administrative expenses of six of the seven section administrators, the office director, and six secretaries. In calendar year 1995, the State Bar used approximately \$682,000 from the General Fund to support salaries and administrative costs for these staff. Because the compulsory membership fee provides the primary support for the General Fund, the State Bar's policy results in the spending of a portion of compulsory fees to support voluntary programs.

This practice of subsidizing the administrative costs of section activities is not consistent with another State Bar policy which specifies that funds generated by the section will be used to pay various expenses, including those incurred by the State Bar in furnishing administrative, clerical, and professional assistance to the section. Because participation in a section is voluntary, the State Bar should match the revenues and expenses of the section to ensure that members who participate in and benefit from the section's activities provide the support necessary to conduct those activities. By the same token, members who do not wish to participate in section activities should not be required to support those activities. For example, the Litigation Section generates enough fees from its members to pay its administrator and secretary and does not need subsidy from the General Fund. This example suggests that, by increasing fees for other sections, the State Bar could cover the costs for section administration rather than passing them to the entire membership.



Members who do not participate in voluntary section activities should not be required to support them.




State Bar officials argue that the section administrators and their staff not only provide direct support to the sections but also coordinate and organize about 75 percent of the Minimum Continuing Legal Education programs offered by the State Bar. These training programs are available to all members for a fee, including those who do not belong to the section sponsoring the training. Therefore, the State Bar argues, using General Fund money to pay for these costs is appropriate since these activities provide a benefit to the entire profession.

However, the State Bar could avoid using the General Fund to pay these costs if it included them in determining the fees charged for various training programs. For example, we found that attendance fees charged for several of the section-sponsored training programs covered most of the costs incurred to provide the training. It is section practice to calculate the fees for a training program by dividing the


section's cost to sponsor the training by the number of members expected to attend. By using this methodology, the sections recover most of their costs for organizing the training programs. If they included in their calculation the administration costs currently paid from the General Fund, the sections could recover these costs as well. Rather than the entire membership paying these costs, only the members who directly benefit from the training programs would pay the sections' costs for sponsoring the programs.

Member Fees Are Used for Office Space

As allowed by Section 6140.3 of the Business and Professions Code, the State Bar has included a \$10 charge in its annual fee to support a Building Fund. At the end of 1995, the balance in the Building Fund was \$9,167,610. Before 1996, the State Bar could only use money in the Building Fund for financing and constructing a facility in Los Angeles to house staff, or for any major capital improvement projects related to facilities it already owned. However, effective January 1996, the Legislature removed from the provisions the restriction to the Los Angeles area, and the State Bar may now spend funds to pay for the costs of financing, constructing, purchasing, or leasing facilities to house its staff anywhere in the State.



The State Bar plans to consolidate its three Bay Area offices into a new San Francisco facility by February 1997.



As of March 1996, the State Bar housed its staff in five locations: two offices in San Francisco and single offices in Los Angeles, San Mateo, and Sacramento. It owns one of the San Francisco properties and leases the remaining four offices. Beginning in 1994, the State Bar entered into a long-term lease to house its staff in Los Angeles. The existing San Francisco properties were too small to meet current needs; therefore, the State Bar recently purchased a building in San Francisco to house all its staff who currently work at both San Francisco sites and the San Mateo office. It plans to consolidate these offices by February 1997.

The State Bar financed its purchase of the building in San Francisco by using the existing balance in the Building Fund and two loans from a financial institution. One loan is a 10-year fully amortized note for \$10.9 million. The other loan is a short-term note of \$6 million that it plans to repay when it sells its existing property in San Francisco. The sale is expected to occur within the next two years.

A portion of revenues generated by the \$10 building fee has been pledged for a 10-year loan.

We analyzed the cash flows relating to the purchase of the new building, the leasing of the space in Los Angeles, the sale of the property in San Francisco, and the repayment of the short- and long-term loans used to finance the purchase of the building in San Francisco. We determined that revenues generated by the additional \$10 fee will be adequate to pay for debt service on the 10-year loan and, beginning in 1997, could provide additional funds to support other allowable uses of the Building Fund. However, the amount cannot be reduced until the debt is paid. Specifically, the Business and Professions Code, Section 6008.5, states that whenever the State Bar pledges any portion of the membership fee to pay an obligation, as long as the obligation remains unpaid, the Legislature cannot reduce the maximum fee in effect at the time the obligation is created. When it pays off the loan for the building it purchased in San Francisco, the State Bar should consider reducing the amount it charges members to support the Building Fund.

Conclusion

The State Bar uses the compulsory fees it collects from members to support a variety of mandatory and discretionary programs. We determined that the State Bar could reduce the compulsory fee by improving its cost-recovery efforts for its Discipline and Client Security programs. In addition, the State Bar's policy of using a portion of the compulsory fee to support voluntary programs reduces the amount that would otherwise be available to support programs that benefit all members. As a result, members of the State Bar may be paying higher fees than they should, and they may be paying for services from which they receive no benefit.

Recommendations

To improve recovery of costs related to its Discipline and Client Security programs, the State Bar should take the following steps:

- Pursue additional collection efforts, such as participation in the State's Offset Program which allows the State Controller's Office and the Franchise Tax Board to offset from an individual's tax refund amounts owed to state agencies when their collection efforts have been unsuccessful;
- Maximize the pool of costs it can recover by encouraging more public reprovals of attorneys it disciplines; and

- Ensure that it charges disciplined attorneys for all allowable costs.

To ensure that it uses compulsory fees to support activities that benefit all members, the State Bar should charge the costs for voluntary programs to those who participate in such programs rather than passing some of the costs on to all members.

To ensure that amounts reflected as legislative activities in the Hudson deduction are complete and based on actual efforts, the State Bar should implement a time-reporting system to track the amount of time its employees devote to specific projects, including legislative activities.

Chapter 2

The State Bar Has Improved Its Discipline Process

Chapter Summary

Since 1987, the State Bar of California (State Bar) has made significant changes to its discipline process in response to recommendations made by the Discipline Monitor and the Discipline Evaluation Committee (DEC). Overall, these changes have increased the efficiency, effectiveness, and reliability of the discipline process. However, it has not implemented certain recommendations that would further enhance the effectiveness of this process. In addition, certain practices may create the appearance of a bias in favor of attorneys. Specifically, the State Bar eliminated the process of allowing complainants to appeal complaints they believe were closed improperly. The elimination of this practice, combined with the discretion afforded deputy trial counsels to close cases without systematic review by State Bar management, may contribute to any public perception that it does not properly regulate attorney conduct. Furthermore, the State Bar issues more private than public reprimands, thus effectively depriving the public of knowledge regarding an attorney's past misconduct.


Background

California statutes require the State Bar to administer a process to enforce rules of professional conduct for all its members. In fulfilling this requirement, it receives and investigates complaints of attorney misconduct. The discipline process is its largest program effort. During the 1995 calendar year, the State Bar spent \$37 million (48 percent) of its \$77 million total expenditures to conduct the discipline process.


According to the State Bar, the effects of an increasing membership during the 1980s and the corresponding increase in complaints of attorney misconduct overloaded its discipline process. By 1985, the State Bar had a backlog of 4,000 cases pending investigation and a process that tended to ignore the more complex discipline cases to show progress on the less complex cases. In 1987, the Legislature authorized the appointment of a State Bar Discipline Monitor to perform a review of the discipline process and make recommendations

on how it could be improved. Between 1987 and 1991, the State Bar Discipline Monitor issued a series of ten reports to the Legislature and the California Supreme Court that cited numerous problems with the discipline process and recommended ways to improve it.

In December 1993, the president of the State Bar's board of governors (board) established the DEC to evaluate the fairness, cost, and efficiency of the discipline process. In its report dated August 1994, the DEC concluded that the process is fair to lawyers accused of misconduct and that it found no evidence that complainants are treated unfairly. However, it also stated that, in the eyes of persons who complain about unprofessional conduct, the discipline process appeared biased in favor of attorneys. In addition, the DEC stated that costs could be reduced substantially by eliminating unnecessary positions and practices. Finally, the DEC made several recommendations for improvement, including a major reorganization of the Office of the Chief Trial Counsel (chief trial counsel) for the State Bar, a reduction in the number of judges on the State Bar Court, replacement of the Complainants Grievance Panel (grievance panel), and a reduction in the number of staff in the discipline process.



The DEC stated, in the eyes of persons complaining of unprofessional conduct, the discipline process appeared biased in favor of attorneys.



The State Bar Has Made Significant Changes to Its Discipline Process

The State Bar's current discipline process consists of an intake function, an investigation and prosecution function, a judicial function, and an audit function. The chief trial counsel is responsible for the operation of the intake, as well as the investigation and prosecution functions. The State Bar Court accomplishes the judicial function, and the Discipline Audit Panel (audit panel), which replaced the grievance panel in January 1996, accomplishes the audit function. Appendix A describes in greater detail the activities the State Bar performs related to each of these functions. In response to the reviews performed by the Discipline Monitor and the DEC, the State Bar has made significant changes to each of the functions within its discipline process.

***The Intake Unit Has Not Limited
to 60 Days the Time It Takes
To Process Complaints***

*The DEC concluded
that delays of up to
4 months within the
intake unit severely
limited subsequent
investigative efforts.*

The intake function is the initial contact point for an individual making a complaint against an attorney. The intake unit operates a toll-free telephone line that allows members of the public, referred to as "complaining witnesses," to lodge a complaint against an attorney. The intake unit also receives referrals from attorneys, courts, banks, insurers, and law enforcement agencies related to improper conduct by an attorney.

During its review, the DEC noted that delays of up to 4 months were occurring within the intake unit. Because the Business and Professions Code requires the State Bar to complete investigations within 6 months or 12 months, depending on the complexity of the complaint, these delays severely limited the amount of time that investigators subsequently had to review the complaints. To address this concern, the DEC recommended that the State Bar establish a policy limiting to 60 days the amount of time it takes for the intake unit to process a complaint. According to State Bar officials, the unit has established a 60-day policy; however, the board has not formally adopted it as State Bar policy.

***The State Bar Has Merged
Investigation and Trials Units
Into an Enforcement Unit***

The DEC made several recommendations regarding the investigation and prosecution functions. One of the most significant recommendations that the State Bar implemented was to combine the investigation and trials units into one enforcement unit. The enforcement unit now performs both the investigation and prosecution functions. Because these two functions were separate, the attorney charged with prosecuting the case did not have direct supervision over the investigation. As a result, investigators did not always develop the evidence the deputy trial counsel would need to prosecute an attorney effectively, or the investigator would spend time and resources developing information that the counsel could not use. By merging the units and forming enforcement teams consisting of investigators and attorneys, the State Bar has established a line of communication between the investigators who develop the



facts and evidence of a case and the deputy trial counsels who use this information to prosecute the accused attorney. In addition, six deputy director level positions were eliminated with the merging of the investigation and trials units.

***The State Bar Court Still Has Not
Implemented Some
DEC Recommendations***

*The State Bar has delayed
action on reducing the
number of hearing judges
until a reorganization
could be completed.*

Since 1989, the State Bar Court has performed the judicial function of the discipline process. Located in Los Angeles and San Francisco, this court hears and decides cases related to attorney misconduct. It consists of two departments, Hearing and Review. The Hearing Department judges are responsible for hearing and deciding matters brought to the court by the chief trial counsel. In August 1994, the DEC recommended that the State Bar reduce from six to four the number of hearing judges in the State Bar Court. According to the administrative officer and chief court counsel of the State Bar Court, it was waiting to take action on this recommendation because of several proposed changes in its organization and rules that might impact the workloads of the hearing judges. However, in May 1996, one of the hearing judges resigned from the State Bar Court, reducing the number to five. The State Bar Court requested the California Supreme Court to delay taking any action to fill the vacancy until it could determine whether it could expeditiously adjudicate its caseload with five hearing judges.

The Review Department has three judges who hear and decide matters on appeal from the Hearing Department. The Review Department also performs certain adjudicatory and administrative tasks that the California Supreme Court has delegated to the State Bar Court. The DEC concluded that one full-time and two part-time judges could effectively handle the workload of the Review Department and that support staff should be reduced commensurably. According to the administrative officer and chief court counsel of the State Bar Court, the State Bar retained a consultant to study the size and composition of the Review Department. The consultant concluded that the concept of a three-member State Bar Court Review Department should be retained. The administrative officer also stated that two of the three judges have agreed to reduce their working hours and corresponding salaries by 60 percent. As a result of this voluntary program, according to the administrative officer, the Review Department is effectively operating with a current complement of 2.2 judges.


The State Bar is awaiting California Supreme Court input to change the de novo standard of review.



The DEC also recommended that the Review Department discontinue its practice of reviewing decisions made by the Hearing Department de novo. "De novo" is a legal term that means to rehear the case as if it had not been heard before. This de novo standard of review is more intensive and requires more time than a lesser standard. In his report dated May 1995, the consultant retained to study the composition of the Review Department agreed with the DEC's recommendation that the de novo standard of review should be changed. According to the administrative officer and chief court counsel of the State Bar Court, the State Bar has approved the change in principle. However, both the State Bar and the State Bar Court concluded that, before amending its rules of procedure to change this standard of review, it would seek guidance from the California Supreme Court to determine what effect this change would have on the California Supreme Court's review of State Bar Court cases. The State Bar is in the process of obtaining this input.

The California Supreme Court appoints all State Bar Court judges to serve six-year terms. The DEC made the observation that, under current law, the California Supreme Court appoints all State Bar Court judges at the same time. To minimize disruptions in continuity, the DEC recommended that the State Bar stagger the terms of these judges so that one-third would be replaced every two years. The State Bar agreed with this recommendation and, beginning in 1995, the State Bar, with the approval of the California Supreme Court, staggered the terms of the State Bar Court judges.


***The Discipline Audit Panel Does
Not Provide an Appeal Process to
Dissatisfied Complainants***

Another change in the State Bar's discipline process resulting from the DEC review occurred with the enactment of legislation effective January 1, 1996. Specifically, the Business and Professions Code was amended to replace the grievance panel with an audit panel. The DEC had found that the grievance panel was ineffective. Established in 1986, the grievance panel consisted of three nonattorney public members and four attorney members. The primary responsibility of the grievance panel was to review appeals by complainants of cases that the State Bar had dismissed prior to the filing of any formal disciplinary charges. The grievance panel also reviewed closed files during its annual audit of dismissed cases. The primary reason that the DEC suggested replacing this panel was that, although the grievance panel found that too many complaints

were dismissed prematurely, relatively few cases were ever modified. The DEC also reported that the chief trial counsel largely ignored the annual recommendations of the grievance panel.



Unlike the former grievance panel, the audit panel does not consider or decide complainant appeals for review of closed complaints.



The audit panel consists of seven members, four nonattorneys appointed by the governor or the Legislature and three attorneys, appointed by the State Bar's board. Unlike the grievance panel, the audit panel does not consider or decide complainant requests for review of closed complaints. Instead, it has the authority to conduct comprehensive audits of the entire discipline process. The scope of these audits includes an evaluation of whether the chief trial counsel adopts and adheres to adequate internal policies, procedures, and guidelines.

The elimination of the appeal process by complainants is significant when considered with the discretion afforded deputy trial counsels in closing cases and with the observation by the former grievance panel in its 1995 annual report that, despite improvements in some parts of the discipline process, the State Bar continues to close too many cases prematurely. That same report noted that the State Bar often employed varying standards that create inconsistent results. Finally, while the annual audit will undoubtedly be beneficial to the discipline process, there is no requirement that the scope of the audit includes those cases that the State Bar closed without imposing discipline. The grievance panel, through its appeal process, was able to review these cases and recommend further investigation. The State Bar agrees that a key measure of the effectiveness of its discipline process is satisfaction of complaining witnesses and its ability to protect and assist the public. By effectively eliminating a layer of appeal previously afforded to complaining witnesses, the State Bar may have created the appearance of bias in favor of attorneys.


As a further response to the DEC review and the elimination of the grievance panel, the State Bar created a quality assurance and assessment unit (unit) in January 1996, within the chief trial counsel. Since it is new, the State Bar has not fully developed the unit's policies and procedures. However, according to the chief trial counsel, this unit will assess all ongoing disciplinary activities, processes, and procedures. Specifically, it will evaluate the State Bar's compliance with predetermined performance and service standards, analyze, evaluate, and make recommendations to the chief trial counsel related to State Bar responses to recommendations for improving the discipline process made by other entities, and identifying training needs. However, the unit will not accept or act upon appeals from complainants who disagree with the State Bar's disciplinary decisions.

While we believe this unit will assist the chief trial counsel in managing the discipline process, it will not provide complainants with the opportunity to appeal the State Bar's decisions which the grievance panel formerly provided. Furthermore, since it will report directly to the chief trial counsel, the unit will not be independent of the activities it reviews. This conflicts with the DEC's recommendation that activities developed to replace the grievance panel be independent of the chief trial counsel.

***The State Bar Has Improved
Its Discipline Process
Over the Last Five Years***

To determine if changes the State Bar made in response to the Discipline Monitor and the DEC reports resulted in improvements, we compiled and reviewed key statistics of the discipline process from the past five years. Several different trends indicate that the State Bar has improved its discipline process. Table 5 shows the number of complaints coming into the discipline process and how the chief trial counsel disposed of cases during calendar years 1991 through 1995. The following sections describe the trends we noted and provide a discussion of the factors that contributed to the trends. The State Bar feels that these trends show that it is accomplishing the goals it established to respond to the problems identified in recent reviews of its discipline process. However, because many of the changes resulting from the DEC report took place during calendar year 1995, the trends may not yet reflect the effects of those changes.

***Total Communications Have
Steadily Increased While the Number
of Inquiries Opened Has Decreased***


Calls received over the past five years have increased 79 percent, yet the number of discipline inquiries opened has decreased by 23 percent.

In Table 5, "total communications" represents the number of calls the intake unit receives on its toll-free telephone lines, while "inquiries opened" represents the number of communications that the intake unit determined were related to a discipline matter within the State Bar's jurisdiction but which it could not resolve via telephone. As the figures in Table 5 show, the number of calls the State Bar receives has increased by 79 percent over the five-year period; however, the number of inquiries opened has decreased by 23 percent since 1991. According to the State Bar, the increased number of communications is attributable to the increasing number of

Table 5

***Summary of Complaints Processed by the
Office of the Chief Trial Counsel
Calendar Years 1991 Through 1995***

	1991	1992	1993	1994	1995
<u>Intake Unit</u>					
Total communications	76,858	89,467	111,219	112,165	137,780
Total inquiries opened*	20,754	21,741	20,625	17,534	15,957
Inquiries closed without discipline	13,283	13,307	11,631	10,151	8,951
Inquiries closed with alternative discipline measures	924	1,238	1,785	1,934	1,634
Inquiries advanced to investigation	6,163	7,881	6,949	6,247	5,720
Total Inquiries Closed or Advanced	20,370	22,426	20,365	18,332	16,305
<u>Enforcement Unit</u>					
Disposition of cases investigated:					
Closed without discipline	3,935	4,687	4,080	3,591	4,225
Alternative discipline imposed	960	837	910	1,286	1,703
Cases filed in State Bar Court	1,994	1,155	1,318	1,274	1,456
Total Cases Closed or Filed	6,889	6,679	6,308	6,151	7,384
*The total number of inquiries closed with and without discipline and the inquiries advanced to investigations does not equal the number of inquiries opened because inquiries opened in one calendar year may not be closed or forwarded to investigations until the subsequent calendar year.					

attorneys practicing in California, as well as to efforts it has taken to make the toll-free telephone number more accessible to consumers who experience problems with their attorneys. The State Bar believes the decrease in the number of inquiries opened is a direct result of its increased emphasis on resolving complainants' concerns without opening matters that would not ultimately result in discipline.

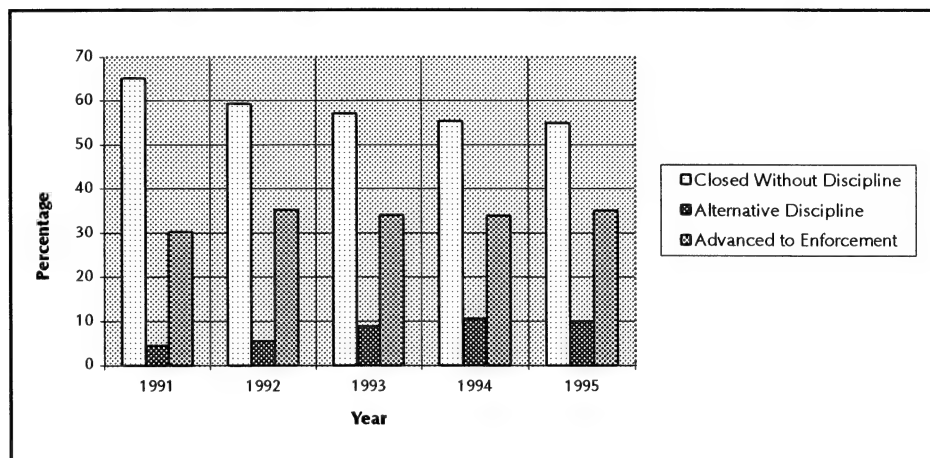
***The Proportion of Cases Closed
With Alternative Discipline
Has Steadily Increased***

As Figure 2 illustrates, although the percentage of inquiries closed without discipline has decreased from 1991 through 1995, the percentage of inquiries closed with alternative

discipline has correspondingly increased. The percentage of inquiries forwarded to the enforcement unit has remained relatively consistent during the same five-year period.

Figure 2

***Percentage of Inquiries Processed
by the Intake Unit***



According to the State Bar, the trends in the disposition of discipline cases reflect the increased emphasis by the chief trial counsel to resolve less severe cases of attorney misconduct outside the formal discipline process. The State Bar believes this trend also demonstrates the success of its efforts to make the discipline process more efficient, thus allowing attorneys and investigators in the enforcement unit to focus their efforts on the more egregious offenders.

The chief trial counsel has placed increased emphasis on resolving less severe cases of misconduct outside the formal discipline process.

In Figure 2, inquiries “closed without discipline” represent those for which the State Bar did not impose discipline as well as those that it decided not to investigate because of insufficient evidence or lack of proof to merit further action against the accused attorney. Inquiries closed with “alternative discipline” are those that the State Bar did not investigate, but for which it administered some sort of discipline or guidance to the accused attorney.

Table 6 identifies the types of alternative discipline imposed by both the intake and enforcement units. For example, the State Bar may send a warning letter to the accused attorney or accept the accused attorney’s resignation. It normally resolves more egregious misconduct by formal discipline, such as suspension or disbarment, in State Bar Court.

Table 6

***Types of Alternative Discipline Imposed
by the Office of the Chief Trial Counsel
Calendar Years 1991 Through 1995***

	1991	1992	1993	1994	1995
Intake Unit					
Resignation with charges pending	189	242	299	256	213
Letter	644	905	1,320	1,581	1,360
Alternative dispute resolution*				8	21
Total Intake Unit	833	1,147	1,619	1,845	1,594
Enforcement Unit					
Admonitions	119	89	42	58	2
Letters	620	546	648	982	1,490
Agreement in lieu of discipline	125	94	117	162	110
Resignation with charges pending	96	108	103	84	101
Total Enforcement Unit	960	837	910	1,286	1,703
*The alternative dispute resolution program began in 1994.					

***The Percentage of Cases Closed
Without Discipline in the
Enforcement Unit Appears High***

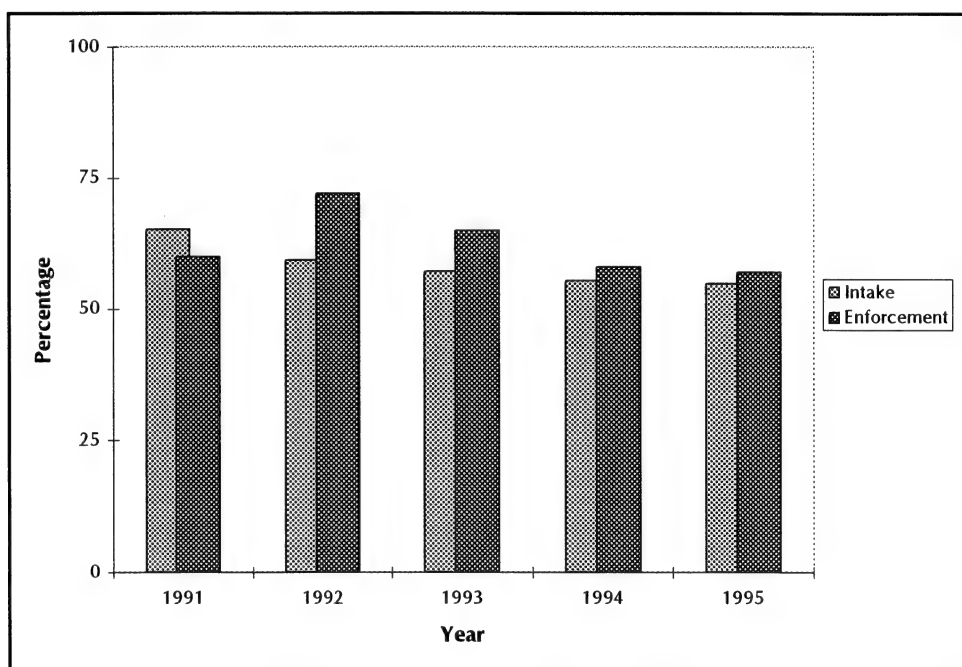
Cases closed without discipline are those that the enforcement unit investigated but determined that discipline was not merited. Similar to inquiries closed in the intake unit, cases closed with alternative discipline in the enforcement unit are those in which State Bar staff determine that a minor instance of misconduct has occurred. These cases generally represent instances of attorney misconduct that it deems do not merit probation, suspension, or disbarment. Instead, the State Bar advises the accused attorney that the actions leading to the complaint were not appropriate and that he or she should take action to correct the situation. Further, it warns the attorney that continued misconduct could lead to formal disciplinary proceedings.

As shown in Figure 3, the percentage of cases closed without discipline in the enforcement unit exceeded the percentage of cases closed without discipline in the intake unit for four of the five years. Because the intake unit performs the initial review of complaints coming into the process, it is reasonable to expect that a high percentage of inquiries opened in the intake unit would be closed without discipline. However, because this screening process occurs in the intake unit, and because

complaints are not forwarded to the enforcement unit unless there is sufficient merit to warrant an investigation, it does not appear reasonable that the enforcement unit would close without discipline a larger percentage of cases than did the intake unit. Furthermore, because the intake unit's initial screening of a complaint includes a review of the case by an attorney who determines whether the complaint merits investigation, the statistics may suggest that the enforcement unit is closing cases without discipline when discipline may indeed be warranted.

Figure 3


***Percentage of Cases Closed
Without Discipline***




***The State Bar Has Not Established
a Systematic Process To Review
Periodically the Cases Closed by
Deputy Trial Counsels***

In 1995, the grievance panel issued its final annual report and concluded that, despite improvements in some parts of the discipline process, the State Bar's discipline enforcement units close too many cases prematurely. The panel also reported that, during its nine-year history, it repeatedly observed that the State Bar closed too many cases prematurely and that

the enforcement units inconsistently and improperly applied low-level sanctions to attorneys. The panel cited several examples in which the State Bar appeared reluctant to investigate meaningfully or pursue charges of misconduct against prosecutors or other governmental attorneys. The panel also cited examples in which the State Bar failed to pursue discipline against attorneys who committed misconduct in litigation matters in court even when the court imposed sanctions or made findings confirming the misconduct.



The absence of a systematic review of cases closed in the enforcement unit represents a weakness in management oversight intended to assure that appropriate decisions are made.



During our review of the discipline process, we evaluated the internal controls the State Bar has implemented to ensure that a complaint is processed properly. One weakness in the internal controls is the absence of a systematic review of cases closed in the enforcement unit. As discussed earlier, the deputy trial counsel has the authority to close cases and provide guidance and direction to the investigators. Except for cases involving difficult or sensitive circumstances, management in the enforcement unit does not normally review staff decisions to close a case. While it is reasonable for the deputy trial counsel to have the authority to close cases, these decisions should be subject to periodic management review to ensure they are appropriate and that staff apply case closure procedures consistently. This lack of management oversight will be increasingly significant as the chief trial counsel continues to emphasize closing minor cases of attorney misconduct outside the State Bar Court. Furthermore, if the enforcement unit closes a case of attorney misconduct without discipline when discipline is merited, the State Bar may deprive the public of adequate protection from unethical attorneys and may add to any public perception that it does not adequately regulate attorney conduct.

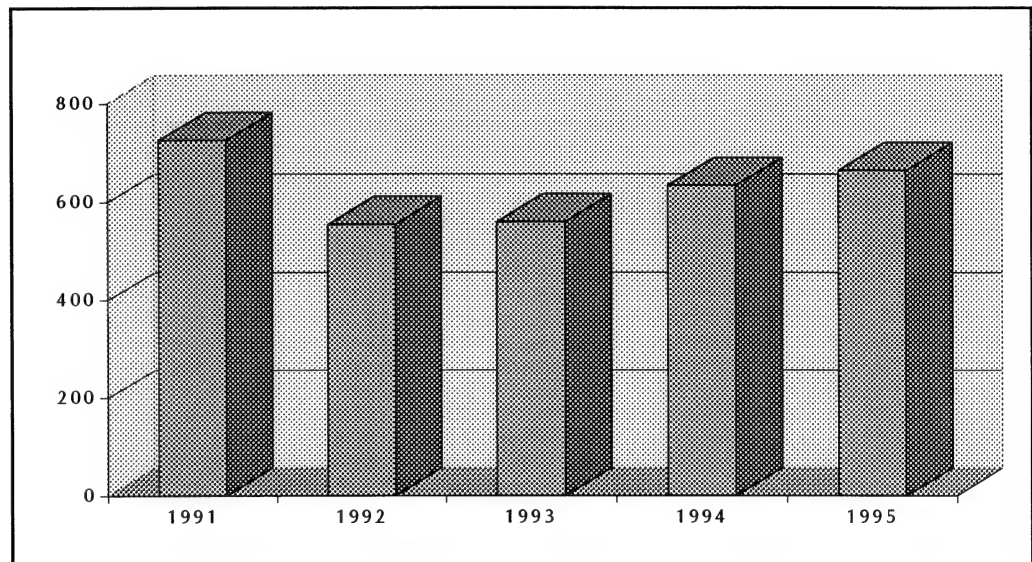
The Number of Cases Filed in State Bar Court Has Increased

Cases filed in State Bar Court are those complaints that the chief trial counsel has investigated and determined have sufficient evidence for the State Bar to bring formal charges of misconduct against the accused attorney. The State Bar Court acts as an administrative arm of the California Supreme Court in that it has statutory authority to conduct hearings and make recommendations to the California Supreme Court regarding disbarment, suspension, or reproval. However, only the California Supreme Court has the statutory authority to disbar or suspend an attorney.

As shown in Figure 4, the number of filings in State Bar Court has increased from 554 in 1992 to 664 in 1995. Filings in State Bar Court may include multiple complaints alleged against one attorney. For example, the 664 filings in calendar year 1995 resulted from 1,456 complaints. According to the State Bar, the increased number of filings can be attributed to a decrease in the backlog of cases being investigated and an increase in investigated cases being filed.

Figure 4

***Cases of Attorney Misconduct
Filed in State Bar Court
1991 Through 1995***



Most Attorney Reprovals Are Private

*The number of private
reprovals far exceeded
public reprovals in each
of the five years reviewed.*

Signed by the presiding judge, a reproof is a letter sent to a State Bar member accused of misconduct stating the charge or charges of which he or she has been found guilty. Either the State Bar Court or the California Supreme Court can issue this form of discipline, which can be either public or private. Public reprovals are a matter of public record, published in the California Bar Journal, and may be disclosed to the public over the telephone. Although the State Bar advises the complainant of the discipline, it does not publish private reprovals in the California Bar Journal, and it does not disclose private reprovals to the public over the telephone.

The State Bar's chief trial counsel encourages the deputy trial counsels to seek public reprovls whenever possible. However, as shown in Table 7, the number of private reprovls rendered by the State Bar Court far exceeded public reprovls in each of the five years we reviewed. By imposing a private rather than a public reprovl, the State Bar effectively deprives the public of knowledge regarding an attorney's past misconduct. Also, it cannot seek recovery of the costs it incurs to discipline attorneys for whom the State Bar Court issues a private reprovl, as it can if the reprovl is public.

Table 7

***State Bar Court Disciplinary Actions
1991 Through 1995***

	1991	1992	1993	1994	1995
State Bar Court					
Disciplinary Actions:					
Admonition	3	1	0	1	2
Private reprovl	80	100	119	122	97
Public reprovl	34	71	71	56	67
Total for State Bar Court	117	172	190	179	166

***The Number of Suspended
Attorneys Has Increased Overall***

Although cases are filed in the State Bar Court, only the California Supreme Court has the authority to disbar or suspend an attorney. As stated earlier, the cases heard in these courts represent those cases in which the attorney's acts of misconduct are the most egregious. The State Bar acts as the administrative arm of the California Supreme Court in that it conducts hearings and determines the existence of probable cause regarding the misconduct. After a hearing, the State Bar Court may forward the case to the California Supreme Court with a recommendation that the attorney either be disbarred or suspended. As shown in Table 8, the number of attorneys disbarred from practice has remained relatively constant, but the number of attorneys suspended from practice increased from 342 in 1991 to 495 in 1994, then decreased slightly to 431 in 1995.

Table 8

**California Supreme Court
Disciplinary Actions
1991 Through 1995**

	1991	1992	1993	1994	1995
California Supreme Court					
Disbarment	69	53	67	79	63
Private reproof	3				
Probation—no suspension	5	2		2	
Resignation with charges pending	85	108	105	94	98
Suspension with probation/conditions	265	281	267	316	307
Suspension without probation	2	6	12	6	7
Suspension stayed with probation	75	95	139	173	117
Total for California Supreme Court	504	545	590	670	592

Conclusion

The State Bar has made significant improvements to its discipline process in response to recommendations made by the Discipline Monitor and the DEC. For example, the State Bar is able to discipline attorneys more efficiently because it merged its investigation and trials units. In addition, it has saved money by eliminating a level of management in its investigation unit. However, it has not adequately responded to all of the recommendations made by these reviewers. Specifically, the State Bar has not established a formal policy to require its intake unit to either close an inquiry or advance it to investigations within 60 days. In addition, the Review Department of the State Bar Court has not responded to the recommendation that it discontinue its practice of reviewing cases on a de novo basis.

We also noted that certain practices of the State Bar may create the appearance of bias in favor of attorneys. Specifically, it eliminated its process of allowing complainants to appeal complaints they believe were closed improperly. In addition, although the State Bar encourages its prosecutorial staff to pursue public rather than private reproofs, the majority of reproofs the State Bar Court issued during the past five years have been private. When it issues a private rather than public reproof, the State Bar effectively deprives the public of knowledge regarding an attorney's past misconduct and cannot recover the costs it incurs to discipline the attorney.

Recommendations

To maximize the efficiency and effectiveness of its discipline process, the State Bar should take the following actions:

- Adopt a policy requiring the intake unit to close an inquiry or forward it to the enforcement unit within 60 days; and
- Ensure that it provides an independent appeal process to respond to concerns of complainants who feel that their complaints against attorneys were closed improperly.

To ensure that its process of disciplining attorneys properly protects the public, the State Bar should do the following:

- Establish a procedure to require enforcement unit management to systematically review cases being closed without discipline or with alternative discipline to ensure that the decisions made by the deputy trial counsels are appropriate and consistent with State Bar policy; and
- Pursue public rather than private reprimands whenever possible.

To maximize its overall efficiency, the State Bar Court should take the following actions:

- Reduce the number of judges in the Hearing Department or justify the need for its current number of judges; and
- Eliminate the Review Department's practice of using the de novo standard of reviewing decisions made by the Hearing Department.

Chapter 3

Strengthening Administrative Controls Could Reduce Costs

Chapter Summary

The State Bar of California (State Bar) does not ensure that persons claiming reimbursement for travel expenses adhere to its travel policy. In addition, some elements of the travel policy are weak and provide opportunities for abuse. Specifically, these policies allow claimants to include costs of more than one individual on a single weekly expense report and business expenses that are not travel related. We also found instances in which the State Bar reimbursed individuals for expenses in excess of allowable per diem rates without prior authorization.

We also reviewed the State Bar's internal controls over its contract processing and identified weaknesses in the areas of contract justification, separation of duties, competitive bidding, and procedures to prevent and detect duplicate or excessive payments. Because of these weaknesses, the State Bar does not have adequate assurance that it spends funds for purposes approved by the board of governors (board) and obtains the best price for goods and services it procures. For example, we found instances where the State Bar could have saved money if it had hired additional staff rather than contracting for services. These control weaknesses also increase the risk that fraud and abuse could occur and not be detected.

Finally, we found that some methods the State Bar uses to allocate its general and administrative costs are weak. Specifically, the method it uses to allocate its general and administrative costs to the Sections Fund does not reflect the benefit the fund derives from these costs. We also noted that the State Bar did not allocate any of its risk management costs to its restricted funds in 1995. In addition, it did not allocate any of the general and administrative costs remaining in the General Fund to the programs within that fund. As a result, the State Bar's restricted funds may not pay their fair share of general and administrative costs, and program managers cannot assess the reasonableness of the general and administrative costs that benefit their programs.

The State Bar Does Not Adequately Control Its Travel Costs

The State Bar overpaid 27 percent of the per diem expenses we reviewed.

Although the State Bar has a travel-expense policy, it does not ensure that persons claiming reimbursement adhere to it. In addition, some elements of the policy do not provide adequate controls over travel expenses, thus allowing opportunities for abuse by those claiming reimbursement of expenses. Our review of claims for reimbursement of travel and related expenses (weekly expense reports) also highlighted deficiencies in the travel policy. Specifically, we reviewed 32 weekly expense reports totaling \$11,023 and noted exceptions to the travel policy in 13 of the reports for which a total of \$5,419 was claimed. The amounts claimed on the 13 reports consisted of \$3,934 for per diem expenditures, such as meals and lodging, and \$1,485 for business and professional relations expenditures. The State Bar overpaid approximately \$1,083 of the \$3,934 of per diem expenditures claimed on the 13 reports. As a result of these weaknesses, it cannot assure that its travel costs represent appropriate and necessary business expenses.

Our review of the 32 weekly expense reports also revealed weaknesses in the travel expense policy. Specifically, we believe the State Bar does not maintain adequate control over travel expenses and provides opportunities for abuse because it allows claimants to include costs of more than one individual on a single weekly expense report and business expenses that are not travel related.

The current policy provides an opportunity for several travelers to claim the same expense.


The travel policy allows individual travelers to include expenses for other State Bar travelers on their weekly expense reports. The policy directs claimants to include the costs for other travelers under the category "Business, Professional Relations and other Expenditures," and it states that the names of the other travelers and amount paid should appear on the report. This policy is weak because it does not ensure that the other travelers will not claim reimbursement for the same expenses. In fact, we noted two instances in which duplicate claims occurred. In one case, the State Bar reimbursed a claimant for the costs of several meals for himself and four other individuals. However, three of the other four individuals claimed the same meals on their individual weekly expense reports, and the State Bar also reimbursed those claimants. As a result, the State Bar issued duplicate payments totaling \$78.

The travel policy may also provide an opportunity for individuals to circumvent other travel policies designed to control costs. Specifically, individuals can obtain


reimbursements for meals in excess of per diem rates if they, or the accounting office, record costs for meals as catering expenses. When costs are recorded as catering expenses, the accounting office does not measure them against the allowed per diem rates. In the example described above, the State Bar paid the claimant \$58.64 more for meals than per diem rates allow because the accounting office reflected the costs as catering expenses for a group rather than as travel expenses for individuals.

In another example, the State Bar reimbursed an employee for a lunch she purchased for herself and 14 other members of a board committee. In this case, the total amount exceeded per diem rates by \$29.30. The State Bar's accounting office split the costs for the lunch between travel and catering, charging the amount allowed by per diem rates to its travel expense codes for meals and the excess of \$29.30 to a catering expense code. In addition, 4 of the 15 individuals, including the employee reimbursed, were State Bar employees who were not currently on travel status and, therefore, improperly received lunch, which cost the State Bar an additional \$32. As a result, the State Bar paid a total of \$61.30 for costs it should not have incurred.



The travel policy also allows individuals to use the weekly expense report to claim reimbursement for business and professional relations expenditures. While the policy requires claimants to provide supporting documentation for each item that exceeds \$25, it does not require claimants to obtain approval for such purchases in advance. This allows individuals to circumvent the State Bar's procurement policy, which generally requires purchase orders for all materials and services costing \$25 or more.



Because employees need not obtain approval for purchases over \$25, they can circumvent the State Bar's procurement policy.



In our review of weekly expense reports, we noted several instances where the State Bar reimbursed individuals for business expenses exceeding \$25 for which there were no purchase orders. For example, basing its payments on weekly expense reports, the State Bar reimbursed one employee for a computer mouse costing \$97.37, two computer modems costing \$32.55, and computer literature costing \$71.65. It did not require the employee to submit a preapproved purchase order to support the need for these purchases. In another example, the State Bar reimbursed a volunteer for costs included on a weekly expense report related to preparation and distribution of a mailer. These included labor costs of \$120 for which there was no purchase order or other form of prior authorization. We could not determine from the available documentation whether the volunteer charged for her own labor or someone else she hired to perform the work. These examples show that


Employees received reimbursement for lodging in excess of allowable rates.


individuals can and have circumvented procurement controls by using the weekly expense report to obtain reimbursement for purchases of goods and services in amounts that would otherwise require a purchase order. As a result, the State Bar cannot be assured that claimants are making purchases for necessary business expenses.

The State Bar also reimbursed claimants for lodging expenses in excess of allowable rates on four of the weekly expense reports we reviewed. For example, it reimbursed one claimant for two nights of lodging in Michigan at a rate of \$275.17 per night, an amount more than twice the \$119 allowable rate. As a result, the State Bar paid \$312.34 more than the allowable rate for the two nights of lodging. Although the travel policy allows for reimbursement of lodging in excess of normal rates if the State Bar approves the costs in advance, no prior authorization was on file for this transaction.

As a result of these weaknesses, the State Bar overpaid claims for reimbursement of travel expenses and cannot be assured that its travel costs represent appropriate and necessary business expenses. In addition, weaknesses in the travel expense policy provide opportunities for abuse to occur and remain undetected.

The State Bar's Controls Over Contracting Need Improvement

We reviewed the State Bar's internal controls over contracting as outlined in its manual of Control Policies and Procedures. We also reviewed agreements between the State Bar and 33 contractors to obtain a better understanding of these controls and determine whether it has implemented them. We found that current controls do not provide the State Bar with adequate assurance that it is spending funds for board-approved purposes and that it has obtained the best price. Specifically, we identified weaknesses in the following areas related to its controls over the award and administration of contracts:

- Justification that contracting represents the most cost-effective way to obtain needed services;
- Separation of duties related to the approval of contracts and the authorization to pay contract invoices;
- Competitive bidding;

- Procedures to prevent and detect duplicate or excessive payments; and
- Execution of contracts before work begins.


The State Bar could have saved money by hiring additional staff rather than contracting for services.

Current procedures do not require those who procure services to justify that contracting represents the most cost-effective way of obtaining the needed services. During our review of its agreements with 33 contractors, we noted two examples that indicate the State Bar could have saved money if it had hired additional staff rather than contracting for the services. In one example, the State Bar contracted with a computer consulting firm to provide assistance in the analysis, design, programming, and implementation of software computer systems. The contract does not specify a particular scope of services to be provided; it only states that the State Bar will pay the consultant between \$50 and \$60 per hour, depending on the nature of the services provided. According to the vendor payment file, the State Bar paid the consulting firm approximately \$2 million from January 1990 through March 1996.


The director of the State Bar's computer services unit told us that the contractor provides staff as needed to assist with ongoing system maintenance activities. He also stated that the contract staff are not directly employed in system analysis, design, or implementation; they perform most of the development programming and some maintenance programming. Finally, he stated that hiring additional staff would have been less expensive than using the consulting firm. In fact, the director prepared a proposal in September 1991 to upgrade six positions and hire three additional staff to perform the services that the consulting firm was providing at that time. In the 1991 proposal, he estimated that these staffing changes would cost only about \$188,000 per year, a figure that is significantly less than the \$325,000 the State Bar paid the consulting firm in 1995 alone.

We asked the senior executive of the State Bar's Office of Administration and Finance why it had not implemented the proposal to replace the computer consultant with additional staff. He responded that since it planned to consider these changes along with other staffing changes based on a review of the organization as a whole, the implementation of the proposal was delayed. He said it has recently decided to implement the proposal which he expects to occur by July 1996.

In another example, the State Bar contracted with a former employee who agreed to continue to provide legal services after retirement. This contract was negotiated and executed six months before the employee's retirement on June 30, 1988. The original contract became effective July 1, 1988, the day after the employee retired, and expired on December 31, 1988. The terms of the contract limited the former employee's compensation to no more than \$7,500. State Bar officials stated that it benefited from the opportunity to retain the employee's services after he retired because there was no one in California more knowledgeable or experienced in the application of the constitutional defenses and immunities available to it in litigation. However, in 1995, seven years after the employee retired, the State Bar continued to contract with this individual. Furthermore, it has since filled the position he vacated when he retired. During 1995, the State Bar paid the retired employee over \$84,000 for fees and expenses, approximately \$16,000 less than the salary it paid the employee who replaced him. However, based on a 40-hour work week, the State Bar pays the current employee approximately \$48 per hour, while it pays the retired employee \$90 per hour, nearly twice the rate it pays the current employee.




The State Bar's procedures do not adequately separate contract approval and invoice payment duties.




We also noted that the State Bar's procedures do not adequately separate duties related to the approval of contracts and the payment of contract invoices. According to its Control Policies and Procedures, the board must approve all contracts except in the case of emergencies. These procedures also indicate that the board's approval of a budget or agenda item constitutes conferral of authority to execute contracts. The board does not generally approve individual contracts but instead delegates the authority to sign all contracts to the executive director or his designees. The procedures make the office on whose behalf a contract was executed responsible for its administration. Although the procedures do not specifically address the authority to approve payment, the executive of the office that benefits from the contract generally authorizes payment of invoices related to the contract. This causes an inadequate separation of duties in some cases. For example, we noted one instance in which an office executive signed both the contract as a designee of the executive director and invoices as the administrator of the contract. To protect against possible fraud and abuse, a person who has authority to approve a contract should not also have authority to approve payments related to the contract. When such sensitive duties are not adequately separated, the opportunity for abuse increases.

In addition to the issues discussed above, we also noted the following weaknesses in controls over the award and administration of contracts:



The State Bar's procedures to prevent duplication of payments on contracts are not adequate.





- Because it neither uses contract payment logs nor assigns unique numbers to all of its contracts, the State Bar's procedures to prevent duplicate or excessive payments are not adequate. Our review found no evidence of payment logs for any contracts. State Bar officials stated that the finance office recently instituted a contract payment log for agreements that are on file with that office. The officials further stated that the State Bar started assigning unique numbers to signed contracts received by its finance office. However, since the finance office does not receive all contracts, some have contract payment logs and unique numbers while others do not. The officials also stated that the State Bar has a purchase order system to track vendor payments. However, this system does not currently include contract numbers. Therefore, the accounting office cannot use it to determine whether payments are within the limits specified in each contract. When such control procedures are not employed, the accounting office cannot easily detect duplicate or excessive payments related to contracts.
- The negotiation of contracts is weak because policy does not require those who procure goods and services to obtain competitive bids before selecting a contractor. In one example we noted, the State Bar contracted with a vendor to print materials it sends to its members without seeking bids from other parties. In the following year, at the suggestion of an employee, the State Bar used a different vendor who offered a better price. Because it did not obtain competitive bids for the work in the first year, it may not have received the best price.
- The State Bar does not adequately control the authorization process to ensure that contracts are executed before work begins. For five of the contracts we reviewed, work had started before the dates on which the contracts were signed. In one instance, the period for performance specified in the contract had expired before the parties signed it.

Because of these weaknesses, the State Bar does not have adequate assurance that it spends funds for board-approved purposes and that it obtains the best prices for goods and services. These weaknesses in internal controls also increase the risk that fraud and abuse could occur and remain undetected.

***Elements of the State Bar's
Method To Allocate Administrative
Costs Are Weak***


The State Bar initially records its general and administrative costs in the General Fund and then allocates some of these costs to restricted funds. It established the restricted funds to support specific functions, such as the activities of its sections discussed in Chapter 1. Depending on the character of the costs, the State Bar uses different methods to allocate its general and administrative costs to the restricted funds that benefit from them. For example, it allocates human resources costs based on the number of authorized employees assigned to support the various activities the State Bar accounts for in its restricted funds.

We found that some of the methods used to allocate its general and administrative costs are weak. Specifically, the method the State Bar uses to allocate general and administrative costs to its Sections Fund does not reflect the benefit the fund derives from these costs. In addition, in 1995 the State Bar did not allocate any of its risk management costs to its restricted funds. Finally, the State Bar does not allocate any of its general and administrative costs to the programs within the General Fund that benefit from these costs.



*General and administrative
costs are not fully or
properly charged to all
funds.*


We reviewed the basis that the State Bar uses to allocate costs from the General Fund to each restricted fund and found that, for the Sections Fund, it is not reflective of the expenses the General Fund incurs on its behalf. As discussed in Chapter 1, the State Bar uses the General Fund, which is primarily supported by annual member fees, to pay for most of the staff who support the activities of the sections. It charges the Sections Fund for a portion of its general and administrative costs, such as finance and personnel costs. However, instead of allocating general and administrative costs based on some measure of General Fund expenses incurred on behalf of the sections, the State Bar uses a percentage of the revenue the Sections Fund receives. The percentage of revenue it currently uses is the same percentage originally adopted by the board in 1989. Because it uses a method to allocate general and administrative costs that is based on revenues in the Sections Fund rather than expenses in the General Fund, the State Bar may not be charging the Sections Fund an appropriate share of such costs. For example, based on actual expenses the General Fund incurred in 1995, it undercharged the Sections Fund \$127,000.

In addition, the State Bar did not allocate to its restricted funds all of the general and administrative costs it incurred in 1995. Specifically, it failed to allocate the costs for its risk management cost center. This cost center includes insurance costs such as earthquake insurance for State Bar facilities. In 1995, the State Bar reported total expenses in the General Fund of \$430,000 for this cost center. Since insurance costs benefit the State Bar as a whole, all of its funds should bear a portion of these costs. Because it did not include the costs from its risk management cost center in its allocation of general and administrative costs, the State Bar did not charge the restricted funds their fair share of these costs.



The State Bar did not allocate \$15 million in general and administrative costs to the various programs supported by the General Fund.



Finally, the State Bar operates programs out of the General Fund as well as its restricted funds. As described above, it allocates a portion of its general and administrative costs to the restricted funds. Because the General Fund supports a significant number of programs, most of the general and administrative costs remain in the General Fund. In our review of its allocation process for 1995, we found that the State Bar did not allocate almost \$15 million of the general and administrative costs remaining in the General Fund to the various programs supported by it. Rather, it chose to report these costs separately as general and administrative costs on its financial reports. Because the State Bar did not allocate the general and administrative costs remaining in the General Fund to each of the programs supported, it did not report the ultimate costs of each of these individual programs in the financial reports. In addition, the program directors cannot monitor general and administrative costs charged to their respective programs to determine whether they are reasonable.

Conclusions

The State Bar's current policies and procedures for travel expenses and contracting provide little control over expenses and provide opportunities for abuse. As a result, it may be spending more money than necessary and cannot be assured that its costs represent appropriate and necessary business expenses. In addition, some of its methods of allocating general and administrative costs are weak. Consequently, the restricted funds may not pay their fair share of general and administrative costs, and program managers cannot assess the reasonableness of the general and administrative costs that benefit their programs.

Recommendations

The State Bar should amend its travel policy to provide better control over its costs and limit opportunities for abuse. Specifically, it should take the following steps:

- Require submission of separate weekly expense reports for each individual claiming reimbursement of expenses;
- Restrict the types of business expenses that can be claimed on weekly expense reports to those that are travel related;
- Clarify the difference between catering expenses for groups and travel expenses for individuals to prevent circumvention of its travel policy; and
- Ensure that employees, committee members, and volunteers who are eligible for travel reimbursement adhere to the travel policies.

In addition, the State Bar should improve the system of internal control over its contracting process to limit costs and reduce the risk of abuse. An effective system of internal control over the contracting process includes procedures that provide:

- Adequate separation of duties to ensure that those who approve contracts do not also approve payments related to contracts;
- Sufficient justification of the need to contract for services as opposed to performing the work in-house or hiring additional staff to accommodate an increased workload;
- A competitive bidding process to obtain the best price for goods and services;
- A process to prevent and detect duplicate payments or payments in excess of agreed-upon prices; and
- Assurance that contracts are executed before work begins.

Finally, the State Bar should improve its methods of allocating general and administrative costs. Specifically, it should do the following:

- Ensure that the basis it uses to allocate general and administrative costs to the Sections Fund reflects the benefit derived from them;
- Allocate the costs for its risk management activities to the funds that benefit from them; and
- Allocate the general and administrative costs that remain in the General Fund to each of the programs the fund supports.

Chapter 4


The State Bar Needs To Improve Its Strategic Planning Efforts

Chapter Summary


The State Bar of California's (State Bar) strategic action plan (plan) does not formulate goals and objectives that management and staff can use to accomplish the overall mission. In addition, it has not established time lines or action plans to complete each objective listed in the existing plan. It also has not developed benchmarks or performance measures to gauge the success of its various activities. As a result, the plan does not serve as a useful tool for management to evaluate success in accomplishing the goals of each of its offices and, ultimately, its overall mission.

The Unique Character of the State Bar Calls for an Aggressive Attitude Toward Planning

Many characteristics of the State Bar and the environment in which it operates underscore the necessity of thorough planning. Although the Business and Professions Code imposes diverse requirements on the State Bar, it also allows discretion in determining the specific activities it undertakes. The State Bar's activities are further complicated by the opposing character of its user groups, which include attorneys whose conduct it regulates and whose needs it serves, as well as members of the public whom it strives to protect. To carry out its various responsibilities, the State Bar uses the services of both paid staff and volunteers, a situation that can make accountability difficult. Since it is largely supported by mandatory fees imposed on its membership, the State Bar will continue to face the necessity of justifying the amount of fees it charges. Also, it has little control over a large part of its workload. For example, the number of applicants and complainants heavily influence the level of effort it must expend on admissions and discipline activities. These factors make the State Bar's planning efforts and the allocation of its resources not only challenging, but also critical.



*The State Bar's activities
are complicated by the
opposing character of its
user groups.*



Strategic Planning Is an Essential Management Tool

Strategic planning is a long-term, future-oriented process of assessment, goal setting, and decision making that maps an explicit path between the present and a vision of the future. Essential elements leading to sound strategic planning include the following:

- Analyzing the work environment to identify strengths, weaknesses, problems, and opportunities;
- Identifying key issues relating to the mission and activities being planned for;
- Defining the mission and formulating consistent goals;
- Establishing priorities among the goals and allocating resources accordingly;
- Defining the objectives necessary to achieve each stated goal;
- Establishing time lines and action plans to complete each objective;
- Defining benchmarks or targets for each significant activity; and
- Measuring the results of planned operations against the benchmarks to evaluate performance and reset targets as necessary.

Successful planning efforts provide many benefits to both the agency and the clients it serves. For example, strategic planning will improve an agency's ability to anticipate and accommodate the future by identifying issues, opportunities, and problems. Good planning will enhance decision making at both the operational and executive management levels because of its focus on results. Planning efforts geared toward outcomes or benefits also explicitly emphasize client satisfaction. Successful strategic planning provides needed information to guide managers in making resource allocation decisions and establishes a basis for measuring the success of the agency's activities. The fundamental concept underlying strategic planning is its dynamic nature. The planning process is not a one-time project that, when completed, remains static. It

should be an iterative process that is refined and refocused as performance is measured, targets are reset, and new information becomes available.

The State Bar's Strategic Action Plan Is Incomplete

The strategic action plan contains neither action plans nor time lines for accomplishing objectives.


The State Bar's plan consists of an organizational blueprint that the board of governors (board) developed in 1991 and summaries of planning discussions the board held during 1992 through 1995. According to State Bar officials, executive staff consolidated all the planning discussions into one document. However, those discussions did not focus on development of an overall strategic plan. Each year, the board chose certain segments of the organization as the narrower focus of its planning efforts. In addition, the organizational blueprint has a mission statement, nine specific organizational goals, and several objectives, but it does not include action plans or time lines for accomplishing the objectives. The plan also does not specify benchmarks for any of the various activities and functions performed by the State Bar or performance measures that management and staff can use to evaluate their success in accomplishing the objectives.

The board has not formally adopted or approved the plan, and at the time of our review, the plan had not been distributed to staff. According to State Bar officials, the board is currently revising the plan which it expects to complete by July 1996.


The State Bar Has Not Fully Used the Results of a Workload Standards Study

In 1990, the Legislature added Section 6140.16 to the Business and Professions Code to require the State Bar to develop workload standards to measure the effectiveness and efficiency of its programs, provide guidance to the State Bar, and develop information for the Legislature to allocate resources. The amendment required the State Bar to use the workload standards in determining the numbers and classifications of staff required to conduct the activities of its mandated programs. The legislation also required the State Bar to use the workload standards to develop its 1992 budget proposal.

The State Bar hired a consulting firm, KPMG Peat Marwick (consultant), to perform the required workload standards study. The consultant identified and defined key workload indicators and performance measures, measured the workloads of staff, and calculated current workload standards.



The State Bar did not use the consultant study for long-term strategic planning.



The State Bar used the results of the study to prepare its budget proposal for the Legislature in 1992; however, according to the senior executive of the Office of Administration and Finance, it did not use the results for long-term strategic planning. Instead, it used the study as a budget tool to satisfy concerns raised by the legislative analyst when the State Bar requested an increase in its budget. We believe the State Bar also should have used the study as a basis for developing its strategic action plan rather than viewing the study as a one-time project. State Bar officials stated that much of the consultant's work is outdated and of no use because of major departmental reorganizations. Strategic planning is a dynamic process, and we believe the State Bar could have addressed organizational changes as they occurred by revising old benchmarks and performance measures and developing new ones.


As part of its report, the consultant made several recommendations to help the State Bar implement and use the workload standards it developed. The State Bar has not implemented two critical recommendations. Specifically, the consultant recommended developing an automated time-reporting system and assessing individual employee performance with respect to the workload standards. Time reporting that links employee efforts to performance measures is an effective management tool because it allows management to focus on critical processes to determine where change is needed and how best to allocate resources. Periodic evaluation of employee performance based on communicated expectations is beneficial to both management and staff because it assists management in making staffing decisions and can identify training needs and career opportunities for staff. According to State Bar officials, implementation of these recommendations was not feasible because most of its employees are represented by unions that would oppose such changes. The State Bar officials further stated that implementing the changes in the face of such opposition would cause the State Bar to lose more than it would gain.

***The State Bar Has Not Always
Developed or Used Benchmarks
To Measure Performance***


The State Bar has developed generally formalized goals and objectives for its significant activities, but it has not completely and consistently established benchmarks to assess outcomes or evaluate performance related to those activities. We reviewed the extent to which it has developed and utilized benchmarks for activities related to three of its most significant programs: Discipline, Admissions, and Client Security. The State Bar has established and utilized benchmarks for one class of employees in the Admissions program, but it has not developed benchmarks for many of its significant activities. Data it currently produces could provide meaningful feedback related to the success of programs and the adequacy of employee performance, but the State Bar does not always use the data for this purpose. It also has not established targeted outcomes for programs or expectations for employee performance.

Although benchmarks have been established for selected activities, the State Bar has not developed a complete set of benchmarks for many of its significant activities. State law requires it to complete investigations of attorney misconduct within 6 or 12 months of receiving a complaint, depending on the complexity of the case. The State Bar monitors its performance related to this requirement, but it has not developed time requirements for other critical parts of the discipline process. For example, it has a policy that new complaints regarding attorney misconduct should be forwarded to the enforcement unit within 60 days of receipt by the intake unit; however, the board has not formally adopted the policy.

The enforcement unit has established a target time frame of 6 months for filing completed investigations with a goal of 90 days. We believe these time frames are too broad to provide meaningful feedback on the efficiency of this part of the discipline process. Since the law requires completion of an investigation within 6 to 12 months of receiving a complaint, we believe that establishing a target that allows an additional 6 months to file the case does not adequately challenge performance. In our review of 15 cases, we noted 5 instances where the enforcement unit exceeded the 90-day goal. Furthermore, it took more than 6 months to file 4 of the 5 cases after it had completed the related investigations. Developing and monitoring a meaningful benchmark related to this part of the discipline process would help the State Bar determine reasons for delays or the need to revise its process for filing cases.



*The enforcement unit's
target time frame for filing
completed investigations
is too broad to be
meaningful.*



The State Bar has not developed benchmarks related to its Client Security program, which is designed to compensate clients for monetary losses due to a lawyer's dishonest conduct. For example, even though it has specified the timely processing of claims as an objective of the program, it has not established a target time frame for processing a claim. Another objective of the Client Security program is to promote public awareness of the Client Security Fund's existence. However, the State Bar has not specified a target level of outreach or some other type of benchmark to determine whether it is accomplishing its goal.

***The State Bar Is Not Using
Readily Available Data
To Assess Performance***

The State Bar regularly produces a broad range of data related to its various activities. It uses data such as the number of cases investigated and claims processed to provide information for its annual budget and other reports, but it does not use these data to assess the efficiency of processes or evaluate employee performance. For example, the State Bar produces data related to claims it processes under the Client Security program, but does not use this data to assess the strengths and weaknesses in the claims payment process. In another example, managers for the intake unit have access to data regarding the number and duration of telephone calls handled by each complaint analyst. In addition, the managers also have data related to the productivity of investigators and trial counsels; however, management does not use this data to evaluate the efficiency and effectiveness of its processes or the performance of its employees.

Various State Bar officials have told us they are reluctant to develop performance measures and evaluate staff against the measures for two basic reasons. First, they believe the existence of employee unions makes such a process difficult and unfeasible. Second, they believe establishment of workload standards puts too much emphasis on the quantity of work performed rather than its quality. While we recognize that implementation of performance measures can be difficult, we believe the benefits are well worth the effort.

We noted one example in the Admissions program for which the State Bar has successfully established benchmarks and has used them to evaluate staff performance. According to the Rules Regulating Admission to Practice Law in California, every applicant will be of good moral character. The director

Many functions of the State Bar could benefit from development of benchmarks.

of moral character determinations has developed specific benchmarks for the analyst position in that section, including target time frames and levels of output. For example, analysts must process new applications within 60 to 65 days of receipt and 13 to 15 files per day to receive the “exceptional” rating in their performance evaluations. The director developed the benchmarks after obtaining suggestions from upper management and the analysts themselves. This ensures that employees are aware of management’s expectations and fosters employee support of the benchmarks. These benchmarks also appear on the annual evaluation forms that management completes and files in each analyst’s personnel file. We believe that other functions within the State Bar would benefit by developing similar benchmarks and performance measures that management could use to evaluate the efficiency of processes and the performance of employees.

Conclusion

The State Bar has not developed all the essential elements of sound strategic planning, nor has it implemented key recommendations of a workload standards study that would facilitate the development of target workloads and the evaluation of performance. It also has not used data it produces to measure the efficiency and effectiveness of its activities and to evaluate the performance of its employees. As a result, the State Bar’s strategic planning process does not serve as a useful evaluation tool.

Recommendations

To improve the effectiveness of its strategic planning efforts, the State Bar should:

- Establish action plans and time lines to complete each of its objectives;
- Define benchmarks or targets for each of its significant activities; and
- Measure the results of its planned operations against the benchmarks to evaluate performance and reset targets as necessary.

To aid in its development of benchmarks and performance measures, the State Bar should implement an automated time-reporting system that allows it to determine the time required for employees to perform significant activities.

Finally, to assist management in making staffing decisions and developing its employees, the State Bar should perform periodic evaluations of employee performance based on clearly communicated expectations.

We conducted this review under the authority vested in the state auditor by Section 8543 et seq. of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,



KURT R. SJOBERG
State Auditor

Date: May 21, 1996

Staff: Elaine M. Howle, CPA, Audit Principal
John F. Collins II, CPA
Patrick Adams
David Biggs, CPA
James Gabler
Kathleen Sergeant
Rupi Singh, CPA

Appendix A

The State Bar's Discipline Process

The State Bar of California's (State Bar) discipline process has undergone significant changes in recent years in response to recommendations for improvements made by the Discipline Monitor and the Discipline Evaluation Committee (DEC). Currently, the State Bar operates the discipline process through its intake and enforcement units under the Office of the Chief Trial Counsel (chief trial counsel) and the State Bar Court. Additionally, the Discipline Audit Panel (audit panel) provides an independent review of certain aspects of the process. The following paragraphs describe by function the current operations of the State Bar's discipline process.

Intake Unit

The intake unit is the initial contact point for an individual making a complaint against an attorney or seeking general information about attorneys or the State Bar and its programs. The intake unit operates a toll-free telephone line that allows members of the public, referred to as "complaining witnesses," to call and make a complaint against an attorney. The intake unit also receives referrals from attorneys, courts, banks, insurers, and law enforcement agencies about improper conduct by an attorney.

When a complaining witness contacts the intake unit, the staff tries to obtain as much information as possible from the complainant about the alleged improper activity. The intake unit also sends a complaint form asking the complaining witness to describe his or her allegations against the attorney and provide corroborating evidence. After receiving this information and determining that, if substantiated, the alleged action warrants discipline, the intake unit opens an inquiry.

An attorney in the intake unit then reviews the information provided by the complaining witness and determines whether the allegation has sufficient merit to refer the complaint directly to enforcement for an investigation. If the intake attorney finds that the allegation does not have sufficient merit, the intake unit closes the inquiry and advises the complaining witness of the disposition. If the intake attorney determines that an attorney may have committed a violation that, if substantiated, would

not result in prosecution by the chief trial counsel, he or she refers the inquiry to a complaint analyst in the intake unit. This analyst is then responsible for contacting the accused attorney and the complaining witness to try to resolve the dispute between the two parties. If the analyst is unable to resolve the dispute, the intake unit may issue a letter to the attorney warning against future instances of the alleged violation. Finally, if the intake attorney finds that the allegation, if substantiated, would result in discipline, a case number is assigned and the file is forwarded to the State Bar's enforcement unit.

Enforcement Unit

The chief trial counsel operates enforcement units in San Francisco and Los Angeles to handle complaints it receives from the intake unit. The intake unit forwards complaints to the two units based on the geographical location of the attorney. The State Bar has five enforcement teams in Los Angeles and one enforcement team in San Francisco. The enforcement teams are responsible for investigating the complaints to determine whether sufficient evidence is available to substantiate the allegations, and if the allegations are substantiated, to prosecute the offending attorney for the misconduct. If the investigator is unable to substantiate the complaint, the deputy trial counsel closes the case. If the complaint is substantiated, the investigator summarizes the facts and evidence of the case and forwards it to the deputy trial counsel, who drafts a Notice of Disciplinary Charges (notice) that summarizes the charges alleged against the attorney. The notice is the document used to initiate formal disciplinary proceedings against the accused attorney in the State Bar Court.

However, before the deputy trial counsel files the notice with the State Bar Court, the accused attorney is informed and has up to 20 days to negotiate a settlement. This procedure is significant because a complaint is not considered public information until the notice is filed in State Bar Court. If the attorney does not respond to the offer of the 20-day settlement conference, or if no settlement is reached, the notice is filed in the State Bar Court.

State Bar Court

The State Bar Court, located in Los Angeles and San Francisco, hears and decides cases related to attorney misconduct. The State Bar Court consists of two departments, Hearing and

Review. The Hearing Department has six judges who are responsible for hearing and deciding matters brought by the chief trial counsel. The Review Department has three judges, including the presiding judge of the State Bar Court, who hear and decide matters on appeal from the Hearing Department. The Review Department also performs certain adjudicatory and administrative tasks related to the attorney discipline process that have been delegated to the State Bar Court by the California Supreme Court. The following table describes the primary types of proceedings the State Bar Court hears:

Table 9

***Primary Types of Proceedings
Heard by State Bar Court***

Type of Proceeding	Description
Original Matter	Disciplinary proceeding initiated by the chief trial counsel as the result of the receipt of a complaint from a client, court, attorney, or others.
Conviction Referral	Disciplinary proceeding initiated following attorney's conviction of crime. Convictions are normally referred to the State Bar by convicting courts or prosecution offices.
Probation Violation	Disciplinary proceeding initiated as result of attorney's alleged violation of terms of probation ordered by the California Supreme Court or State Bar Court in a previous disciplinary proceeding.
Rule 955 Action	Disciplinary proceeding initiated as result of attorney's alleged failure to properly notify clients, courts, opposing counsel and others of actual suspension from practice in a previous disciplinary proceeding.
Reinstatement	Proceeding initiated by disbarred or resigned attorney seeking readmission to the practice of law.
Moral Character Proceeding	Applicants for admission to practice of law seeking hearing in State Bar Court following determination by Committee of Bar Examiners that applicant lacked required good moral character.
Business and Professions Code Section 6007(b)	Proceeding to determine whether attorney should be involuntarily enrolled as an inactive member based upon attorney's mental incompetence or habitual use of drugs or alcohol.
Business and Professions Code Section 6007(c)	Proceeding to determine whether attorney should be involuntarily enrolled as an inactive member on grounds that attorney poses a substantial threat of harm to clients or the public, pending full hearing on underlying disciplinary proceeding.

Discipline Audit Panel

In addition to the intake and enforcement units and the State Bar Court, the State Bar also has an audit panel that provides an independent review of the discipline process. In 1996, the Business and Professions Code was amended to create the audit panel, which replaced the Complainants Grievance Panel. The audit panel consists of seven members, four of whom are non-attorneys appointed by the governor or the Legislature and three of whom are attorneys appointed by the State Bar's board of governors.

The audit panel has the authority to select specific subject areas of the discipline process for which it conducts one annual audit. The primary purpose of these audits is to evaluate whether the chief trial counsel adopts and adheres to adequate internal policies, procedures, and guidelines. In addition, the audit panel is required to conduct random annual audits of complaints that were closed in lieu of disciplinary prosecution by the chief trial counsel. This includes admonitions, warning or directional letters, and agreements in lieu of discipline. The audit panel will also determine whether the chief trial counsel adheres to the Statement of Commitments to Complainants, which consists of 14 commitments the chief trial counsel has adopted as goals to be responsive to concerns of complainants. Additionally, the audit panel determines whether the chief trial counsel acts in a consistent manner with respect to the following: filing decisions, imposition of informal discipline, and diversion programs. Finally, the audit panel will determine whether the chief trial counsel has adequate policies and procedures related to complainant dissatisfaction, and whether it responds sufficiently to discipline committee directions.

Appendix B

Current Staffing and Salary Information

The State Bar of California's (State Bar) administration is led by an executive director who reports to the board of governors (board). The executive director has a staff of senior executives who assist in implementing policies established by the board. Each senior executive has one or more executives to run the daily operations of the various offices within the State Bar. In January 1996, the State Bar had 697 employees, including 88 executives and 609 staff. Of the 88 executives, 10 were classified as senior executives.

Table 10 indicates that the number of State Bar employees has decreased by 42 from 739 in 1994 to 697 in 1996. This reduction is attributable to an increase of 16 in the number of vacancies and the elimination of 26 positions. As a result, the ratio of staff to executives has increased slightly from 6.5 in 1994 to 6.9 in 1996.

Table 10

***Change in Executive and Staff Positions
Authorized and Filled From
January 1994 to January 1996***

	January 1994	January 1996	Change
Full-Time Positions Filled			
Senior executives ^a	9	10	1
Executives	89	78	(11)
Staff	641	609	(32)
Total	739	697	(42)
Ratio of staff to executives	6.5	6.9	0.4
Total Authorized Positions ^b	816	790	(26)
Vacancies	77	93	16

^aIncludes the executive director, general counsel, and chief trial counsel.

^bFigures include part-time employees.

Except for certain confidential employees who assist management with employer-employee relations, the nonexecutive staff of the State Bar are represented by a labor union. The union negotiates, on behalf of the represented employees, a Memorandum of Understanding (MOU) with State Bar management that details conditions of employment, including wages and benefits. As part of its preparation for negotiations with the union, the State Bar hires a consultant to analyze salaries of nonexecutives at organizations it considers similar. Although executive staff are exempt from union membership, the State Bar also uses its consultant to perform an analysis of salary levels for its executives. The executive director uses this analysis to set and periodically adjust salaries. Senior executive staff do not have a standard salary schedule; rather, each negotiates his or her compensation package individually with management. Table 11 shows the pay scales for senior executives in effect in January 1996.

Table 11

***State Bar Senior Executive
Salary Ranges in January 1996***

Position	Pay Range
Executive director	\$145,000
General counsel/chief trial counsel	\$125,000–140,000
Other senior executives*	\$100,000–126,000

*As of January 1996, the State Bar employed seven other senior executives in the following programs: Admissions, Bar Communications, Governmental Affairs, Professional Competence Planning and Development, Policy Management, Administration and Finance, and Member and Client Services.

To determine if the salaries of nonexecutive staff were reasonable, we reviewed the analysis of salaries of comparable organizations prepared by Towers Perrin, the State Bar's consultant for 1995. To obtain comparative information for this review, the consultant compiled salary information from five city, county, and state government agencies, including the city and county of Los Angeles and California's Office of the Attorney General. Towers Perrin concluded in its report that, while the State Bar's salary ranges slightly exceeded those of comparable organizations, the salaries it paid nonexecutive staff were slightly less. The consultant recommended that the State Bar maintain its salary ranges but consider providing larger step or merit increases to its employees.

We also reviewed the analysis Towers Perrin conducted in 1995 for salaries of executives at the State Bar and eight comparable organizations in city, county, and state governments, including the city and county of Los Angeles and California's Office of the Attorney General. Towers Perrin stated in its report that the salaries of executives at the State Bar were slightly lower than those of executives at comparable organizations and that its executive pay ranges were also slightly lower than those of comparable organizations. However, it concluded that the salary ranges do not need adjustment; rather, the State Bar should consider merit or general salary increases for its executives.

Towers Perrin did not include the senior executives in its analysis of salaries of executives at comparable government agencies. Instead, the State Bar asked Towers Perrin to compare the senior executives' salaries with the results of a survey conducted by the State Bar of New York. To conduct the comparison, Towers Perrin plotted the pay for four senior executive positions in relation to budget size, number of employees, membership size, and state population. It then developed trend lines to show the State Bar's relative pay position for senior executives compared to similar pay positions included in the survey. While there was not a strong correlation between pay and each variable, Towers Perrin concluded that the State Bar's pay for three of the four senior executive positions fell below most of the trend lines.

Finally, we compared the salaries of the State Bar's senior executives with the salaries of the highest-paid executives at the California Attorney General's Office and the California Medical Board because those organizations perform similar functions. The Medical Board licenses physicians and surgeons, investigates complaints against its licensees, and disciplines those found guilty of violating the law or regulations. One of the Attorney General's Office's responsibilities is to assist the Medical Board in its disciplinary process by prosecuting cases referred to it. Using the midpoint of the pay range shown in Table 11 for other senior executives, we found that the salaries of these seven senior executives are from 8 percent to 14 percent higher than the salaries of the highest paid executives at the Medical Board and the Attorney General's Office. Furthermore, the salary that the State Bar pays its executive director is 38 percent more than the salary of the highest-paid executive at these two state organizations.



The State Bar of California

555 FRANKLIN STREET • SAN FRANCISCO, CA 94102 • (415) 561-8200

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May 16, 1996

Mr. Kurt R. Sjoberg
State Auditor
Bureau of State Audits
660 J Street, Suite 300
Sacramento, CA 95814

Dear Mr. Sjoberg:

Thank you for this opportunity to respond to your comprehensive management audit of the State Bar of California. I would like to thank you and your staff of seven auditors who worked so diligently for the thousands of hours required to complete an audit of this magnitude. It is our understanding that your office absorbed expenses above and beyond the State Bar's mandated cost.

It is particularly gratifying to have the State Auditor acknowledge the significant changes the State Bar has made in its disciplinary system and recognize the increase in the system's "efficiency, effectiveness and reliability." However, we must point out that it is misleading to say that the bar spent 48% of its total expenditures to operate its discipline system. That figure includes both restricted funds and those supported by voluntary fees. It is more accurate to compare the percentage spent on discipline to the general fund portion of mandatory fees, the only source of money available to support this activity. In this context, discipline represents 70%.

We also were pleased that the audit report documents the fiscal and business analysis and legal basis for the bar maintaining a presence in both northern and southern California. In addition, the report agrees that the level of funds maintained in the building fund has been appropriate and, also notes, overcrowding in the San Francisco location necessitated the purchase of a new building.

The State Bar is a complex organization which is not easy to understand. Within our charge of regulating the legal profession, we support a variety of mandatory and discretionary programs to advance the science of jurisprudence, promote the administration of justice and fulfill our public protection role. There remain several inaccuracies in the audit which we have pointed out to the audit staff. In fact, we believe that a correct understanding of some of the facts may have changed the conclusions. Appendix I describes the areas which we believe contain inaccuracies.

Mr. Kurt R. Sjoberg
May 15, 1996
Page 2

The report concludes that "compulsory" or mandatory fees might be reduced if the Bar maximized the recovery of discipline costs by pursuing more public reprovals and by stepping up our collection efforts and updating our cost recovery model. While we will be aggressively exploring ways of enhancing collection efforts, we think that based on our experience and that of the state court system which utilizes many of the techniques recommended in the report, the costs recovered may not yield a significant increase in our revenue stream.

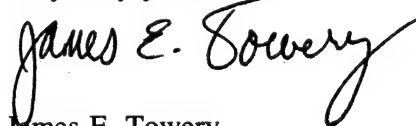
Further, by encouraging public reprovals as a means of revenue generation, the report fails to understand that the level of discipline is driven by the nature of the offense, not the pursuit of additional revenue. There are other means of generating revenue, consistent with our goal of public protection, which we outline in our detailed response to this recommendation in Appendix II. (3)

The report also suggests that "compulsory" fees might be reduced by increasing the charge to the sections of the State Bar for administrative overhead. This is not a new idea. It has been discussed many times over the last ten years and has always been rejected by the Board on policy grounds. The programs offered by the sections benefit both attorneys and the public. The Board has determined that increasing section membership fees or educational program fees would discourage participation and be counterproductive in achieving the organizational goals of assuring that every lawyer is competent and of improving the administration of justice. (4)

A detailed response to the recommendations in the report is attached as Appendix II. I am happy to say that we agree with 15 recommendations, agree to study six, and disagree with only seven. It is our intention to address promptly all recommendations, especially those related to tightening administrative controls. Some corrective measures are already in place, and others will be initiated over the course of the next 12 months.

Finally, I want to thank you for the kind comments of your staff recognizing the full cooperation you received from the State Bar over the past five months and in the preparation of this report.

Very truly yours,



James E. Towery
President

Enclosures

APPENDIX I UNRESOLVED INACCURACIES

FEE REDUCTIONS

- The audit's reference to an "operating surplus" is misleading because the majority of such funds are legally committed for use in future years. (5)
- Unlike the audit's theoretical suggestions of possible opportunities for fee reductions, the State Bar's announced \$20 fee reduction for 1997 is a significant action. The audit barely acknowledges this fact with only a footnote in one of its tables. (6)

DISCIPLINE

- In several places the audit conjectures that a "public perception" exists that the State Bar does not properly regulate attorney conduct. There is no basis in fact for this assertion. The auditors did not cite any evidence to substantiate this notion. (7)
- The audit suggests that the enforcement unit may close a case of attorney misconduct without discipline when discipline is merited. The accusation is made without any evidence to substantiate the conclusion. (8)
- In criticizing the use of reprovals, the audit fails to understand the public nature of private reprovals. Private reprovals that are issued after the filing of a notice of disciplinary charges in the State Bar Court are a matter of public record, are disclosed to the public, and the complete file is available from the State Bar Court. (3)
- In asserting that the State Bar eliminated the process of allowing complainants to appeal complaints they believe were closed improperly, the audit fails to acknowledge that it was the State Legislature and Governor that approved that change. Further, the newly established Quality Assurance and Assessment Unit provides an internal review mechanism. Finally, the audit fails to acknowledge that complainants still have the right of appeal to the State Supreme Court. (9)

- The audit fails to understand the role and authority of the Intake Unit. The Intake Unit is not an investigative unit. Its function is to resolve, divert or mediate. It does not investigate or "substantiate" complaints as suggested throughout the audit. (10)

- The audit is incorrect in its statement that the Quality Assurance and Assessment Unit will not accept or act upon appeals from complainants who disagree with the State Bar's disciplinary decisions. In fact, dissatisfied complainants who disagree with the closure of their complaints may seek review from the Quality Assurance and Assessment Unit, which has the discretion to reopen a closed file for further investigation, or direct appropriate disciplinary action on a particular matter. (9)

The internalization of the process within the Quality Assurance and Assessment Unit is more consistent with the statutory authority of the Chief Trial Counsel and allows the Chief Trial Counsel to direct resources, discipline staff, alter priorities and otherwise be more responsive to identified areas of concern within the office.

- The audit incorrectly describes the scope of closed cases included in the annual audit. The auditor is incorrect in concluding with respect to the Discipline Audit Panel that "there is no requirement that the scope of the audit includes those cases that the State Bar closed without imposing discipline." In fact, the panel not only can audit such cases, it is required to do so annually. (11)

Subdivision (a) (1) of Section 6086.11 of the Business and Professions Code expressly provides, in pertinent part, as follows:

"(a) * * * The panel shall exercise the following powers:

"(1) Conduct one random audit annually of closures of complaints in lieu of disciplinary prosecution by the chief trial counsel. This includes the imposition of admonitions, the issuance of warning letters and directional letters, and agreements in lieu of discipline." (Emphasis added.)

The second sentence of the subdivision expresses the legislative intent that closures in lieu of prosecution be defined as broadly as possible,

including not only straight closures, but also closures in which admonitions have been issued, closures in which warning letters and directional letters have been issued and closures resulting from agreements in lieu of discipline. Indeed, the Discipline Audit Panel's first random audit (which is underway now) is an audit of straight closures in lieu of prosecution.

- The audit invents a term which does not apply to State Bar processes. By referring to "Alternative Discipline," the audit creates confusion and incorrectly implies formal disciplinary action where it should not. The Office of Chief Trial Counsel has recognized that many matters which clog the disciplinary system do not rise to the level of warranting official discipline. (12)

The State Bar gives high priority to the prompt resolution or referral of low-level discipline cases, by reference to attorney-client mediation programs, ethics school or trust accounting school, by admonition, warning or directional letters or by agreements in lieu of discipline. These "alternative to discipline measures" get small cases out of the system quickly, with a minimum use of investigative and prosecutorial resources, so as to allow the concentration of those resources on more serious cases.

- Table 6 in the audit incorrectly includes resignations with charges pending as a type of "alternative discipline". A resignation with charges pending is the functional equivalent of disbarment. It is the acknowledgement by the member of the commission of serious misconduct. (12)
- The audit misstates that "deputy trial counsels (are given discretion) to close cases without systematic review by State Bar management." There is an intensive series of steps utilized by management (Assistant Chief Trial Counsel) including random reviews, reviews triggered by an excessive number of closures, reviews requested by complainants, and by reviewing monthly status reports from each deputy. Of course, after a case is filed, the decision to dismiss a matter can only be done with court approval. If the dismissal is at the request of the State Bar, such a request typically would be made in consultation with the Assistant Chief Trial Counsel. (13)

Finally, all deputy trial counsels and investigators are provided with information on a regular basis which assists them in making proper decisions regarding the closure of files. This includes an extensive training program for all newly hired attorneys and investigators, discussions at biweekly unit meetings, office-wide training programs and dissemination of written materials (including the uniform charging manual, the policy manual and practice pointer memoranda) that explain office policies and practices about how to handle various types of cases and issues to insure a consistent approach to closure of files.

ADMINISTRATIVE CONTROLS

- In comparing the cost of utilizing a contractor with the cost of a State Bar employee, the audit is unbalanced and inaccurate. The comparison includes office and travel expenses in the contractor's cost but not in the cost analysis for the employee. Furthermore, the audit is inaccurate in stating that the current employee is paid \$48 an hour. In fact, that employee's salary and benefit costs are \$64.10 per hour. (14)

STRATEGIC PLANNING

- The statement that the State Bar's strategic plan "had not been distributed to staff" is false. (15)

APPENDIX II

RESPONSE TO SPECIFIC RECOMMENDATIONS

CHAPTER 1

Pursue additional collection efforts, such as participation in the State's Offset Program which allows the State Controller's Office and the Franchise Tax Board to offset from an individual's tax refund amounts owed to state agencies when their collection efforts have been unsuccessful.

- ***We agree to study.***

Maximize the pool of costs it can recover by encouraging more public reprovals of attorneys it disciplines.

- ***We disagree. This recommendation fails to recognize that the primary purpose of attorney discipline is to protect the public and that the appropriate level of discipline must be based on the severity of misconduct, as determined within the prosecutorial discretion of the statutorily independent Chief Trial Counsel and the adjudicatory discretion of the independent State Bar Court. The State Bar cannot and should not allow the pursuit of additional revenue to color its public protection role. We will, however, study potential legislation to grant additional authority to the Chief Trial Counsel so that costs may be recovered in certain private reprovals.*** ③

Ensure that it charges disciplined attorneys for all allowable costs.

- ***We agree. Prior to the commencement of this audit, the State Bar organized a staff task force to update the formula under which allowable cost charges are calculated.***

To ensure that it uses compulsory fees to support activities that benefit all members, the State Bar should charge the costs for voluntary programs to those who participate in such programs rather than passing some of the costs on to all members.

- ***We disagree with the conclusion drawn here. This recommendation focuses only on the State Bar sections, and incorrectly presumes that those who participate in a State Bar activity are the only ones who*** ④

benefit from that activity. State Bar sections provide two primary services: educational and legislative. The educational programs are open to all State Bar members and are designed to provide low-cost competency training to the entire profession. The legislative activities address the overall body of law in the state and are designed to improve the administration of justice in California. As such, the State Bar sections do provide "activities that benefit all members," and legitimately are supported in part by general membership funds.

To ensure that amounts reflected as legislative activities in the Hudson deduction are complete and based on actual efforts, the State Bar should implement a time-reporting system to track the amount of time its employees devote to specific projects, including legislative activities.

- ***We agree to study. Although five different arbitrators have validated that the State Bar's Hudson deduction calculation methodology, we will conduct a cost benefit analysis of this recommendation, even though the suggested time-reporting system may involve significant additional costs.***

CHAPTER 2

Adopt a policy requiring the intake unit to close an inquiry or to substantiate and forward it to the enforcement unit within 60 days.

- ***We disagree. The Chief Trial Counsel has such a policy and effectively manages staff to achieve this objective. Formal adoption of this policy by the Board of Governors is not appropriate because it infringes upon the prosecutorial discretion of the statutorily independent Chief Trial Counsel.***

16

Ensure that it provides an independent appeal process to respond to concerns of complainants who feel that their complaints against attorneys were closed improperly.

- ***We disagree. Less than a year ago, the Board of Governors, the State Legislature, and the Governor concurred in dismantling such a process because there was general agreement that the existing appeal process was inefficient, ineffective, and wasteful. Further, the underlying premise of this recommendation is not true because the complainant does have a right to request review of a matter from the Quality Assurance and Assessment Unit. Quality Assurance and Assessment***

9

may reopen a closed matter for further investigation or direct appropriate disciplinary action on the matter. In addition, we know of no other State agency that utilizes the Auditor's recommended appeal process - in fact, in the last legislative session, a proposal to set up such a procedure for the California Medical Board was rejected by the State Legislature.

Establish a procedure to require enforcement unit management to systematically review cases being closed without discipline or with alternative discipline to ensure that the decisions made by the deputy trial counsels are appropriate and consistent with State Bar policy.

- ***We disagree. The designated managers do, as a part of their regular duties and responsibilities, conduct systematic case reviews, including a random sampling of closed matters. A key function of the Quality Assurance and Assessment Unit, established in 1996, is to select and review a statistically valid sampling of both open and closed matters to assure office-wide consistency with established policies. Review is not conducted of every closed case because a significant number of additional managers would have to be employed for this purpose.***

13

Pursue public rather than private reprovals whenever possible.

- ***We disagree. This recommendation fails to recognize that the primary purpose of attorney discipline is to protect the public and that the appropriate level of discipline must be based on the severity of misconduct, as determined within the prosecutorial discretion of the statutorily independent Chief Trial Counsel and the adjudicatory discretion of the independent State Bar Court.***

3

Reduce the number of judges in the Hearing Department or justify the need for its current number of judges.

- ***We agree that the number of State Bar Court judgeships should be studied. The current judges are appointed by the Supreme Court for specific terms; thus, further reduction in their number is not possible at this time. The Board of Governors has already stated its intent to periodically review the workload and the required number of judges for the Hearing Department. The State Bar Court has already asked the Supreme Court to not fill a recently vacated Hearing Department judicial position in order that the analysis may first be completed.***

Eliminate the Review Department's practice of using the de novo standard of reviewing decisions made by the Hearing Department.

- ***We agree. This issue is pending before the Supreme Court.***

CHAPTER 3

Require submission of separate weekly expense reports for each individual claiming reimbursement of expenses.

Restrict the types of business expenses that can be claimed on weekly expense reports to those that are travel related.

Clarify the difference between catering expenses for groups and travel expenses for individuals to prevent circumvention of its travel policy.

Ensure that employees, committee members, and volunteers who are eligible for travel reimbursement adhere to the travel policies.

- ***We agree with each of these recommendations. The State Bar is currently reviewing its expense report, catering, and travel claim policies and procedures in order to make changes to respond to the State Auditor's concerns.***

Adequate separation of duties to ensure that those who approve contracts do not also approve payments related to contracts.

Sufficient justification of the need to contract for services as opposed to performing the work in-house or hiring additional staff to accommodate an increased workload.

A competitive bidding process to obtain the best price for goods and services.

A process to prevent and detect duplicate payments or payments in excess of agreed-upon prices.

Assurance that contracts are executed before work begins.

- ***We agree with each of these recommendations. The State Bar is currently reviewing its contract approval and contract payment procedures, its competitive bidding process, and its contract payment and execution procedures in order to make changes to respond to the State Auditor's concern.***

Ensure that the basis it uses to allocate general and administrative costs to the Sections Fund reflects the benefit derived from them.

- ***We disagree for the reasons set forth in our response to the fourth recommendation above regarding voluntary programs.***

4

Allocate the costs for its risk management activities to the funds that benefit from them.

- ***We agree. The Interfund formula will be modified so as to include the cost of risk management activities.***

Allocate the general and administrative costs that remain in the General Fund to each of the programs the fund supports.

- ***We agree to study. The State Bar will study this recommendation to determine whether the benefits of such a program will outweigh the expected significant additional costs in undertaking this procedure.***

CHAPTER 4

Establish action plans and time lines to complete each of its objectives.

Define benchmarks or targets for each of its significant activities.

Measure the results of its planned operations against the benchmarks to evaluate performance and reset targets as necessary.

- ***We agree. The Board of Governors' Task Force on Governance and Strategic Planning has been meeting in order to revise the State Bar's Strategic Plan. A time line and action plans have been established. It is anticipated that the revised plan with benchmarks and targets will be adopted during the summer of 1996.***

To aid in its development of benchmarks and performance measures, the State Bar should implement an automated time-reporting system that allows it to determine the time required for employees to perform significant activities.

- ***We agree to study.***

Finally, to assist management in making staffing decisions and developing its employees, the State Bar should perform periodic evaluations of employee performance based on clearly communicated expectations.

- **We agree to study. The State Bar already conducts a systematic evaluation of each of its employees based on clearly communicated expectations. The State Bar will review those areas where it collects specific operational data and determine if there are additional areas in which they may be used in those evaluations.**

Comments

California State Auditor's Comments on the Response by the State Bar of California

To provide clarity and perspective, we are commenting on the State Bar of California's (State Bar) response to our audit report. The following numbers correspond to the numbers we have placed in the State Bar's response.

- ① The State Bar misconstrues the context in which we highlight its discipline expenditures. On page 1 of our report, we present an overview of the total revenues and expenditures of the State Bar. From this perspective, it would be inaccurate to state that the State Bar spent 70 percent of its total expenditures to operate its discipline process, when it actually spent only 48 percent overall.
- ② The State Bar is wrong. As indicated in these comments, our report does not contain inaccuracies.
- ③ In our report, we address the issue of the State Bar imposing more private than public reprovals in Chapters 1 and 2. The State Bar has failed to consider the context of our discussion of this issue in its responses. We agree that the primary concern of its discipline process should be public protection. However, we believe it is significant that the number of private reprovals consistently exceeds the number of public reprovals both because the Office of the Chief Trial Counsel (chief trial counsel) encourages public dispositions and because public reprovals provide greater assurance of public protection by increasing awareness of an attorney's past misconduct.

Furthermore, the State Bar overstates the "public nature of private reprovals." According to the State Bar, when it issues a private reproof as a result of a negotiated settlement with an attorney, and the State Bar has not yet filed the case in the State Bar Court, the disposition is **not** a matter of public record. Conversely, if the State Bar issues a private reproof after a case is filed in the State Bar Court, it is a matter of public record. However, an individual would have to physically go to the State Bar offices and request to see the file in order to determine the nature of the discipline imposed. As we state on page 33, this effectively deprives the public of knowledge regarding an attorney's past misconduct.

Finally, as we discuss on page 11, the character of the reproval is significant because the State Bar can only seek recovery of costs related to public reprovals. In fact, the law specifically requires disciplined attorneys to pay for costs the State Bar incurs to impose public reprovals.

- ④ The State Bar's policy to use general membership funds to support the sections is not consistent with the purpose of restricted funds. The State Bar receives voluntary fees from section members and records the revenue in a restricted fund. Accordingly, it should restrict expenses incurred for the benefit of section members to a level that their fees can support. Expenses the State Bar incurs to provide benefits to the membership as a whole or to achieve its overall organizational goals should be paid from the General Fund, the State Bar's unrestricted fund.

Furthermore, in an example on page 14 of our report, we point out that the Litigation Section collects enough fees from its members to pay its administrator and secretary. This indicates that by properly matching revenues with expenses, the State Bar could avoid using its General Fund to support section activities. Also, the purpose of a section is to further knowledge and education in a particular area of legal practice. For example, as indicated on page 13 of our report, the Litigation Section was formed to further the knowledge of a special-interest group about all aspects of litigation. The administrative support of activities which benefit the special-interest group should be funded from the voluntary fees or registration fees for its training programs rather than from the General Fund.

- ⑤ As stated on page 5 of our report, during 1995, \$55 of the average membership fee from active members was an operating surplus available for future spending. Although on page 16 we state that \$10 of the \$55 is committed to the State Bar's purchase of the building in San Francisco, the majority of the surplus is in the General Fund. As described on page 9 of our report, this is an unrestricted fund whose revenues are not designated for a particular purpose by law. Furthermore, as stated on page 8 of our report, the Client Security Fund, a restricted fund, limits the use of its operating surplus to the fund's purposes and related administrative costs. In summary, only \$10 of the \$55 operating surplus is legally committed for use in future years.
- ⑥ As Table 1 on page 7 states, the State Bar anticipates that it will undertake budgetary steps necessary to allow for a 1997 fee reduction of \$20. Characterizing this as a significant action is not appropriate because the State Bar has not yet sent the

1997 fee bill to its members. Furthermore, by implementing our recommendations the State Bar could reduce the fees even more.

- ⑦ The State Bar is incorrect. In our report, we state that certain actions the State Bar has taken “**may** add to **any** public perception that it does not regulate attorney conduct.” Additionally, the Discipline Evaluation Committee, a blue ribbon panel appointed by a former State Bar president, concludes in its August 1994 report that the State Bar’s discipline process has the appearance of being biased in favor of attorneys in the eyes of persons who complain about unprofessional conduct.
- ⑧ The State Bar is mistaken. On pages 29 and 30 of our report, we discuss the Complainants Grievance Panel’s (grievance panel) 1995 annual report in which it cited examples of the State Bar failing to pursue discipline against attorneys who committed misconduct in litigation matters in court even when the court imposed sanctions or made findings confirming the misconduct.
- ⑨ In written communications with us, the State Bar stated that its board of governors (board) made the policy decision to eliminate the grievance panel and its appeal process prior to the legislative action. Further, the State Bar’s chief trial counsel, in a January 1995 memorandum to its board, acknowledges that the quality assurance and assessment unit would not have an appeal function. Finally, our discussion focuses on the actions the State Bar has taken in its discipline process to fulfill its primary goal of complainant satisfaction, rather than what is available through the California Supreme Court.
- ⑩ We modified terminology in our report to clarify the role of the intake unit. However, this modification does not change our conclusion and recommendation regarding the processing of complaints by the intake unit.
- ⑪ The State Bar is missing the point. While the Business and Professions Code, Section 6086.11, refers to complaints closed for which the State Bar issues admonitions, warning letters, directional letters, or agreements in lieu of discipline, on page 27 of our report, we define these actions as “alternative discipline.” Therefore, when we state that there is no requirement that the Discipline Audit Panel include in its audit scope those cases that the State Bar closed without imposing discipline, we are referring to cases for which the State Bar closed the complaint without taking any action.

- ⑫ On page 27, we specifically include resignations in our definition of alternative discipline imposed by the intake and enforcement units. Furthermore, the totals shown in Table 6 on page 28 for "resignations with charges pending" were taken from the section of the State Bar's annual report on discipline that presents statistics for the chief trial counsel.
- ⑬ The State Bar has missed the point. While it may employ nonsystematic reviews, such as those described in Appendix I of the response, it has not established a systematic process of managerial review of case closures.
- ⑭ The State Bar's response attempts to divert attention away from the issue. Whether we use a \$48 or a \$64.10 rate, the \$90 rate it paid the retired employee is still significantly higher.
- ⑮ The State Bar is wrong. On our first day of fieldwork in January 1996, we asked the senior executive of the State Bar's Office of Administration and Finance and its director of the Office of Financial Planning and Analysis for the State Bar's strategic action plan. They responded that it did not have such a document. Later in our audit, the State Bar provided us with a strategic action plan. Moreover, the executive director of the State Bar provided us with a written statement indicating that the strategic action plan had not been distributed to staff.
- ⑯ While the State Bar's board has adopted other policies affecting the discipline process, if the State Bar feels this recommendation would infringe upon the prosecutorial discretion of the chief trial counsel, the chief trial counsel should formally adopt the policy.

cc: Members of the Legislature
 Office of the Lieutenant Governor
 Attorney General
 State Controller
 Legislative Analyst
 Assembly Office of Research
 Senate Office of Research
 Assembly Majority/Minority Consultants
 Senate Majority/Minority Consultants
 Capitol Press Corps